

Senate Bill No. 1349

Passed the Senate September 10, 1997

Secretary of the Senate

Passed the Assembly September 5, 1997

Chief Clerk of the Assembly

This bill was received by the Governor this ____ day
of _____, 1997, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Sections 4001, 4002, 4003, 4004, 4005, 4007, 4008, 4017, 4018, 4021, 4022, 4023, 4024, 4025, 4028, 4029, 4030, 4031, 4033, 4034, 4037, 4040, 4043, 4051, 4052, 4053, 4055, 4056, 4057, 4058, 4060, 4061, 4062, 4063, 4064, 4070, 4071, 4072, 4073, 4074, 4076, 4077, 4080, 4081, 4082, 4100, 4101, 4102, 4103, 4110, 4111, 4112, 4113, 4114, 4115, 4116, 4117, 4118, 4119, 4120, 4122, 4130, 4131, 4132, 4133, 4137, 4138, 4143, 4144, 4150, 4160, 4161, 4162, 4163, 4164, 4170, 4174, 4175, 4180, 4182, 4191, 4197, 4200, 4201, 4202, 4205, 4231, 4232, 4300, 4301, 4303, 4305, 4307, 4309, 4311, 4312, 4320, 4321, 4322, 4326, 4331, 4333, 4339, 4341, 4360, 4361, 4369, 4370, 4372, 4400, 4401, 4402, 19059.5, and 19170 of, to add Sections 4025.1, 4059.5, 4078, 4104, 4105, 4119.5, 4136.5, 4165, 4166, 4167, 4200.5, 4305.5, 4306.5, and 4313 to, to add and repeal Section 4200.1 of, to repeal Sections 4009, 4020, 4186, 4230, and 4233 of, and to repeal and add Sections 4016 and 4136 of, the Business and Professions Code, and to amend Sections 11122 and 11150 of the Health and Safety Code, relating to vocational licensing, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1349, Committee on Business and Professions. Vocations: Pharmacy Law: sanitizers.

(1) Existing law, the Pharmacy Law, provides for the licensing and regulation of the practice of pharmacy under the jurisdiction of the Board of Pharmacy of the State of California. Existing law makes it a misdemeanor to knowingly violate the Pharmacy Law, where no other penalty is provided, and makes all other violations an infraction.

Existing law sets forth various provisions related to the board and its members.

This bill would modify provisions with regard to the board related to the method of reimbursement of the board members, the appointment of the executive officer by the board, restrictions upon a member of the board

teaching pharmacy, the authority of the board to adopt rules and regulations pertaining to establishments wherein certain activities are conducted with drugs or devices, provisions that set forth the authorized functions of a pharmacist, the authority of the board to inspect or investigate, the authority of inspectors of pharmacy to inspect places in which certain activities are conducted with drugs or devices, and the authority of the board to collect all accrued and unpaid renewal fees and applicable penalty fees for a pharmacist license that has been delinquent for more than one year.

(2) Existing law sets forth definitions for purposes of the Pharmacy Law.

This bill would revise and add to these definitions.

(3) Under existing law, it is generally unlawful for any person, other than a pharmacist, to manufacture, compound, sell, or dispense any dangerous drug or device, or to dispense or compound any prescription to a medical practitioner.

This bill would extend this prohibition to apply to the act of furnishing, thereby changing the definition of a crime.

(4) Existing law exempts from the prohibition in (3) above, among others, a veterinary food-animal drug retailer that sells or dispenses veterinary food-animal drugs for food-producing animals if certain requirements are met. Existing law also exempts a manufacturer, wholesaler, or other supplier of hemodialysis drugs and devices distributed directly to patients under specified circumstances.

This bill would provide that an exemptee certificate issued under the above provision related to a veterinary food-animal drug retailer is valid only at the location for which it is issued, prescribe notification requirements when an exemptee is no longer employed by the licensee at the location for which the exemptee certificate was issued, and prohibit the licensee from operating without a pharmacist or an exemptee approved for that location.

The bill also would expand the above described exemption related to a manufacturer, wholesaler, or



other supplier of hemodialysis drugs and devices to apply, instead, to dialysis drugs and devices, as defined.

(5) Existing law prescribes the authority of a pharmacist.

This bill, additionally, would authorize a pharmacist to provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals. The bill would authorize a pharmacist to order and otherwise provide advice or information or patient consultation from outside a premises if certain conditions are met.

(6) Existing law prohibits a person from furnishing any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, or veterinarian.

This bill would authorize under this provision a person to furnish a dangerous drug upon the prescription of any other person authorized by law to prescribe. The bill would prohibit the ordering of dangerous drugs and dangerous devices, except by an entity licensed by the board and would require that the drugs and devices be delivered as provided and would prohibit the transfer, sale, or delivery of dangerous drugs and dangerous devices to anyone, except to designated persons within the state, and to any person outside the state, unless in compliance with the laws of this state, the United States, and the state or country to which the drugs or devices are to be transferred, sold, or delivered, thereby creating a new crime.

(7) Existing law sets forth procedures under which a prescription for a dangerous drug or device may be refilled without the prescriber's authorization if the prescriber is unavailable to authorize the refill and if, in the pharmacist's professional judgment, failure to refill the prescription might present an immediate hazard to the patient's health and welfare or might result in intense suffering. These provisions require the pharmacist to inform the patient and the prescriber and make every reasonable effort to contact the prescriber.



This bill would recast this provision. The bill would apply this provision if the prescriber is unavailable to authorize the refill and it is the pharmacist's professional judgment that failure to refill the prescription might interrupt the patient's ongoing care and have a significant adverse effect on the patient's well-being. The bill would provide that a person may possess a dangerous drug or dangerous device furnished without prescription pursuant to this provision, notwithstanding the prohibition in (6) above or any other law.

(8) Existing law authorizes a prescriber to authorize his or her agent on his or her behalf and designated healing arts licentiates to orally or electronically transmit a prescription to the furnisher and requires the furnisher to record the name of the authorized agent of the prescriber who transmits the order.

This bill, in addition, would require the furnisher to take appropriate steps to determine that the person who transmits the prescription is authorized to do so.

(9) Existing law requires the board to provide each pharmacy with a list of the drugs that pose substantial risk to a person consuming the drug when taken in combination with alcohol or if the drug may impair a person's ability to drive a motor vehicle. Existing law requires that a pharmacist be responsible for providing a specific label or enclosure with the drug container whenever the prescribed drug has not previously been dispensed to the patient, or whenever the prescribed drug has been dispensed in a different dosage, form, strength, or with different written instructions.

This bill would delete these provisions, and, would instead, authorize the board to adopt requirements, by regulation, for additional information or labeling.

(10) Existing law prohibits, with certain exceptions, a person from dispensing any dangerous drug upon prescription except in a container correctly labeled with prescribed information.

This bill would prohibit a person from placing a false or misleading label on a prescription and would prohibit a prescriber from directing that a prescription be labeled



with any information that is false or misleading, thereby creating a new crime.

(11) Existing law requires that all stock of any dangerous drug or device of a manufacturer, wholesaler, pharmacy, medical device retailer, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, or laboratory, or of shipments through a customs broker or carrier be, at all times during business hours, open to inspection by authorized officers of the law.

This bill would delete the list of entities to which the provision applies. The bill would require instead that all stock of any dangerous drug or dangerous device or of shipments through a customs broker or carrier be, at all times during business hours, open to inspection by authorized officers of the law.

(12) Existing law provides that all records of manufacture and of sale, purchase, or disposition of dangerous drugs or devices shall be, at all times during business hours, open to inspection by authorized officers of the law.

This bill would replace “purchase” with “acquisition” in, and make other changes to, these provisions.

(13) Existing law requires the owner or manager of a pharmacy, veterinary food-animal drug retailer, or medical device retailer or other store, shop, building or premises retailing or storing drugs, when called upon by an officer, a member of the board, or a duly authorized inspector, to furnish the names of certain persons together with a brief statement of the capacity in which the persons are employed on the premises.

This bill would delete the authority of an officer or a member of the board to request the above described information, apply this provision to any entity licensed by the board, and revise this provision to apply to retailing, wholesaling, or storing drugs or devices.

(14) Existing law requires a pharmacist to give specific notification to the executive officer of the board of changes regarding his or her name or address.



This bill would extend this notice requirement to a intern pharmacist, technician, or exemptee.

(15) Existing law requires a pharmacist who takes charge of, or acts as manager of, a pharmacy who terminates his or her employment to notify the board within 30 days of the termination.

This bill would revise this provision to replace “manager” with “pharmacist-in-charge,” apply this provision to a pharmacist in charge of any other entity licensed by the board, and provide for similar notice requirements for any exemptee who takes charge of, or acts as manager of, a wholesaler, medical device retailer, or veterinary food-drug animal retailer.

(16) Existing law authorizes a pharmacist to perform skin puncture for purposes of training patients to withdraw their blood in order to perform self-assessment tests.

This bill would revise these provisions to authorize the pharmacist to perform skin puncture for purposes of training and assisting patients in the performance of drug-therapy related patient assessment procedures to monitor medical conditions.

(17) Existing law also authorizes a pharmacist to take a person’s blood pressure, inform of the results, render an opinion, and advise the person to consult a physician of the person’s choice. However, existing law requires the pharmacist to have received training in the standard method of blood pressure measurement, prior to undertaking blood pressure measurement.

This bill would delete the above described specific requirement that a pharmacist have received training prior to undertaking blood pressure measurement.

This bill would require pharmacies to have in place procedures for taking action to protect the public when (a) a licensed individual employed by or with the pharmacy is known to be chemically, mentally, or physically impaired to the extent it affects his or her ability to practice the profession or occupation authorized by his or her license with safety to himself or herself or to the public or (b) an individual employed by



or with the pharmacy is known to have engaged in the theft or diversion or self-use of prescription drugs belonging to the licensed entity. The bill would authorize the board to, by regulation, establish requirements for reporting to the board this conduct or these incidents.

This bill would require that all records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board be retained on the licensed premises in a readily retrievable form and the bill would set forth provisions governing the removal, retention, and maintenance of these records and prescribing the circumstances under which a waiver from the requirements of this provision may be granted.

(18) Existing law regulates the conduct of a pharmacy and prohibits a person from conducting a pharmacy unless he or she has obtained a license from the board. Existing law requires that the license be renewed annually and provides that it is not transferable.

This bill would revise these provisions regulating the conduct of a pharmacy to authorize the board, by regulation, to determine the circumstances under which a license may be transferred, require every pharmacy to within 30 days of designating its pharmacist-in-charge to provide the board with a prescribed notice, authorize a pharmacy to transfer a reasonable supply of dangerous drugs to another pharmacy and authorize the pharmacy to repackage and furnish to a prescriber a reasonable quantity of dangerous drugs and devices for prescriber office use, for purposes of these provisions, replace the reference to “out-of-state pharmacy” with “nonresident pharmacy,” authorize, as an alternative to designated posting requirements of a pharmacy, the provision to consumers of a written receipt that contains the required information on the notice, and eliminate the maximum amount that a pharmacist is authorized to request for price quotations for more than 20 drugs and, instead, authorize the pharmacist to charge a reasonable fee.

(19) Existing law regulates the conduct of a medical device retailer and prohibits a person from conducting a



medical device retailer unless he or she has obtained a license from the board.

This bill would revise these provisions regulating the conduct of a medical device retailer to require a medical device retailer to notify a patient or primary caregiver that consultation about the proper use of dangerous devices and related supplies furnished by the medical device retailer is available, clarify that a medical device retailer may be in charge of a pharmacist and eliminate specific annual requirements of an exempt person supervised by a medical device retailer to complete board-approved courses of home health education, and require a nonresident medical device retailer to register before that retailer can sell or distribute dangerous devices in this state through any person or media other than a wholesaler who is licensed under the Pharmacy Law.

The bill would set forth registration requirements for a person acting as principal or agent for any unlicensed out-of-state medical device retailer to conduct the business of selling or distributing dangerous devices within the state.

(20) Existing law regulates the conduct of a wholesaler and prohibits a person from acting as a wholesaler for purposes of the Pharmacy Law, unless he or she has obtained a license from the board. Existing law also sets forth licensing requirements for an out-of-state manufacturer or wholesaler located or doing business in this state.

This bill would revise these provisions regulating a wholesaler and manufacturer of drugs and devices to clarify that a separate license is required for each place of business owned or operated by a wholesaler of any drug or device, extend application of these provisions to dangerous devices, provide registration requirements for a principal or agent of a medical device retailer, require any manufacturer who sells or transfers any dangerous drug or dangerous device into this state or who receives, by sale or otherwise, any dangerous drug or dangerous device from any person in this state to furnish, on request



of an authorized officer of the law, all records or other documentation of that sale or transfer, make any wholesaler or other distributor that uses the services of any carrier liable for the security and integrity of any dangerous drug or dangerous device through that carrier until the drugs or devices are delivered to the transferee at its board-licensed premises, and prohibit a wholesaler from obtaining any dangerous drugs or dangerous devices that it cannot maintain, in a secure manner, on the premises licensed by the board.

(21) Existing laws regulates the conduct of a prescriber, as defined, and prohibits a prescriber from dispensing drugs or dangerous devices to patients in his or her office or place of practice unless certain conditions are met. The Medical Board of California, the State Board of Optometry, and the Osteopathic Medical Board of California are authorized to enforce this and related provisions.

This bill would add a person who holds a license to practice dentistry to the definition of prescriber and would expressly authorize the Board of Dental Examiners to enforce the above described provisions regarding prescriber dispensing.

(22) Existing law authorizes certain nonprofit or free clinics to purchase drugs at wholesale for administration or dispensing, under the direction of a physician, to patients registered for care at the clinic.

This bill would authorize certain other clinics to purchase drugs for purposes of this provision.

(23) Existing law requires the board to license and issue a certificate to any applicant who meets certain requirements, including, but not limited to, passing a written and practical examination given by the board.

This bill would provide that on or after July 1, 1998, an applicant who fails to pass the examination required by this provision after 4 attempts shall not be eligible for further examination until the applicant has successfully completed a minimum of 16 semester units of education in pharmacy. The bill would require the board, commencing July 1, 1998, to collect data on the applicants



who are admitted to, and take, the licensure examinations required under these provisions and to report to the Legislature after June 1, 2004, and before December 31, 2004, regarding the impact on those applicants of the 4-attempt limit imposed by this bill. The bill would repeal these provisions as of January 1, 2005.

This bill would authorize the board to issue a retired license to a pharmacist who has been licensed by the board for 20 years or longer, and who holds a license that is current and capable of being renewed, that is not suspended, revoked, or otherwise disciplined, or subject to pending discipline, under the Pharmacy Law. The bill would establish the fee for issuance of a retired license. The bill would prohibit the holder of a retired license from engaging in any activity for which an active pharmacist's license is required and require the holder to pass the initial licensing examination to restore his or her license to active status.

(24) Existing law requires that an applicant for registration as a pharmacy technician be issued a certificate of registration if he or she meets any one of certain requirements, including, but not limited to, that the applicant is eligible to take the board's pharmacist licensure examination.

This bill would limit application of this provision to when the applicant is eligible to take the board's pharmacist licensure examination, but has not been licensed by the board as a pharmacist. The bill would provide that once licensed as a pharmacist, the pharmacy technician registration is no longer valid and the pharmacy technician certificate of registration must be returned to the board within 15 days.

(25) Existing law establishes the Committee for the Continuing Education of Pharmacies, under the jurisdiction of the board, consisting of 6 members appointed by the board for a term of 2 years.

This bill would repeal this provision.

(26) Existing law authorizes the board to issue a probationary license to any applicant for a pharmacist



license who is guilty of unprofessional conduct and who has met all other requirements for licensure.

This bill would expand this authority to issue a probationary license to include any applicant to the board for a license.

(27) Existing law requires the board to take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. “Unprofessional conduct” is defined for this purpose to include, but is not limited to, gross negligence.

This bill would revise the definition of unprofessional conduct. Among other changes, the bill would add engaging in any conduct that subverts or attempts to subvert an investigation of the board to the definition of unprofessional conduct. The bill would also provide that unprofessional conduct for a pharmacist may include acts or omissions that involve, in whole or in part, the exercise of his or her education, training, or experience as a pharmacist whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

Existing law authorizes the board to deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of certain provisions of the Pharmacy Law.

This bill would extend this authorization to any significant or repeated failure to comply with specific requirements related to dispensing prescriptions and labeling containers and informing a patient of the harmful effects of a drug dispensed by prescription if it poses a substantial risk to the person consuming the drug when taken in combination with alcohol or if the drug may impair a person’s ability to drive a motor vehicle.

(28) Existing law requires any person who has obtained a license to conduct a pharmacy to notify the board within 30 days of the termination of employment of any pharmacist who takes charge of, or acts as manager of the pharmacy. Existing law subjects this person to



immediate suspension or revocation of his or her license to conduct a pharmacy if he or she fails to notify the board pursuant to this provision and continues to operate, as specified, except by a pharmacist. Existing law also sets forth notification requirements of the pharmacist who takes charge of, or acts as manager of the pharmacy, upon his or her termination of employment.

This bill would revise this provision to provide for summary, rather than immediate suspension or revocation of the license to conduct a pharmacy. The bill would provide similar notification requirements upon termination of the employment of any person who has obtained a license to conduct a wholesaler, medical device retailer, or veterinary food-animal drug retailer and any pharmacist or exemptee who takes charge of, or acts as manager of a wholesaler, medical device retailer, or veterinary food-animal drug retailer.

(29) Existing law prohibits any person from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for a designated time period if certain actions related to the denial, revocation, suspension, failure to renew, or probationary status of a license occur.

This bill would define “manager, administrator, owner, member, officer, director, associate, or partner” for purposes of the above prohibition to refer to a pharmacist or to any other person who serves in that capacity in or for a licensee, thereby expanding the definition of a crime. The bill would provide that this provision may be alleged in any pleading filed pursuant to the adjudication provisions of the Administrative Procedure Act. However, the bill would require any order issued in that case to be as to a person who is named in the caption, as to whom the pleading alleges the applicability of this provision, and where the person has been given notice of the proceeding.

(30) Existing law authorizes a person whose license has been revoked or suspended or who has been placed on probation to petition the board for reinstatement or modification of penalty. Existing law authorizes the



petition to be heard by the board or a committee of the board, or the board to assign the petition to an administrative law judge.

This bill would revise this provision to authorize the petition to be heard by the board sitting with an administrative law judge or a committee of the board sitting with an administrative law judge, or the board may assign the petition to an administrative law judge. The bill would provide that where the petition is heard by an administrative law judge sitting alone, the decision shall be subject to review by the board. The bill would also provide that the board may investigate any and all matter pertaining to the petition and documents submitted with or in connection with the application.

(31) Existing law requires the automatic suspension of any license issued by the board, or the holder thereof, during any time that the person is incarcerated after conviction of a felony, requires the summary suspension of any license issued by the board where a conviction of the holder of the license meets certain conditions, and requires the suspension of any license issued by the board, or the holder thereof, if the board determines that the felony conviction of the holder of the license is substantially related to the qualifications, functions, or duties of the licensee. For purposes of these provisions, existing law provides procedures authorizing various hearings before the board or a committee of the board, or upon assignment by the board, before an administrative law judge.

This bill would revise the hearing provisions to authorize the hearings to be before the board sitting with an administrative law judge or a committee of the board sitting with an administrative law judge, or before an administrative law judge, at the board's discretion, and subject to review by the board.

(32) Existing law provides procedures for a determination by the board of whether a person has been automatically suspended by virtue of incarceration, and, if so, the duration of the suspension and requires the board to notify the person suspended of the suspension.



This bill would require the board to notify the person that he or she has a right to request a hearing, solely as to whether he or she is incarcerated pursuant to a felony conviction.

(33) Existing law authorizes the district attorney of the county wherein violations of the Pharmacy Law occur to conduct all felony prosecutions and other actions and prosecution at the request of the board.

This bill would require the city attorney of the city wherein violations of the Pharmacy Law occur to conduct, other than felony, all actions and prosecutions at the request of the board, thereby imposing a state-mandated local program.

(34) Existing law generally makes it a misdemeanor to knowingly violate the Pharmacy Law and makes all other violations of the Pharmacy Law an infraction, unless otherwise indicated. Existing law makes it a misdemeanor for any person to attempt to secure or secure licensure for himself or herself or any other person under the Pharmacy Law by making or causing to be made any false representations, or to fraudulently represent himself or herself to be registered.

This bill would increase the penalties for these violations, thereby changing the punishment for a crime.

The bill would make it a misdemeanor for any person to obtain a hypodermic needle or hypodermic syringe by a false or fraudulent representation or design or by forged or fictitious name or in violation of the Pharmacy Law.

(35) Existing law makes it a misdemeanor for any person who is neither a pharmacist nor an exemptee to take charge of a medical device retailer or veterinary food-animal drug retailer.

This bill would apply this prohibition to taking charge of a wholesaler. This bill would also make it a misdemeanor for any person who has obtained a license to conduct a wholesaler to fail to place in charge of that wholesaler a pharmacist or exemptee, or for any person, by himself or herself, or by any other person, to permit the dispensing of prescriptions, except by a pharmacist or



exemptee, or as otherwise provided in the Pharmacy Law.

(36) Existing law makes it a misdemeanor, punishable as prescribed, to willfully fail to keep on file and open for inspection by authorized officers of the law for a period of at least 3 years all prescriptions filled by a pharmacy.

This bill would provide, instead, that it is a misdemeanor to fail to maintain on the premises and available for inspection by authorized officers of the law for a period of at least 3 years all prescriptions filled by a pharmacy and all other records required pursuant to (12) above. The bill would require, in cases where the pharmacy discontinues business, that these records be maintained in a board-licensed facility for a period of at least 3 years. The bill would increase the penalty for a violation of this provision. The bill would authorize the board to grant a waiver from the prescription and record maintenance requirements of these provisions.

(37) Existing law provides for the establishment of a diversion program to rehabilitate pharmacists whose competency is impaired due to abuse of alcohol and other drugs or due to mental illness, administered by a contracting employee assistance program. Existing law requires that the board or the employee assistance program, as the case may be, provide certain information to each pharmacist referred to, or who voluntarily participates in, the employees assistance program.

This bill would make various changes with regard to this employees assistance program, including, the addition of provisions that require that the above described information be in writing.

(38) Existing law provides that any pharmacist license that is not renewed within 3 years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the 3-year period.

This bill would provide that any other license issued by the board shall be canceled by operation of law if the permit or license is not renewed within 60 days after its expiration. The bill would prohibit the reissuance of any



license canceled under this provision and would require a new application. The bill would provide that this authority is in addition to the authority of the board to institute any other administrative, civil, or criminal action.

(39) Existing law provides that a person practices veterinary medicine, surgery, and dentistry, and the various branches thereof, when he, among other things, diagnosis or prescribes a drug, medicine, appliance, or application or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, or bodily injury or disease of animals.

This bill would make various clarifying changes with reference to the authority of a veterinarian for purposes of the Pharmacy Law.

(40) Existing law provides for the regulation of various persons engaged in the manufacture, repair, renovation, or sanitization of, or retail or wholesale of home furnishings and insulation administered by the Bureau of Home Furnishings and Thermal Insulation in the Department of Consumer Affairs.

This bill would exempt from the licensure requirement for sanitizers any person who holds a license as an upholstered furniture and bedding dealer, retail furniture and bedding dealer, retail bedding dealer, or custom upholsterer. It would make related changes.

(41) Existing law provides for various fees and other moneys collected on behalf of the board in connection with the licensure of wholesalers of dangerous drugs, pharmacies, and medical device retailers to be credited to the Pharmacy Board Contingent Fund. Existing law continuously appropriates the moneys in the Pharmacy Board Contingent Fund.

Because the bill would prescribe registration requirements for a retired pharmacist license, and a nonresident medical device retailer, it would provide for the deposit of additional moneys in the Pharmacy Board Contingent Fund and would thereby make an appropriation.



This bill would make technical and conforming changes and correct obsolete cross references.

This bill would incorporate additional changes in Sections 4001, 4003, and 4008 of the Business and Professions Code, proposed by SB 827, to be operative only if SB 827 and this bill are both chaptered and become effective January 1, 1998, and this bill is chaptered last.

Because this bill would create new crimes and change the definition of existing crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 4001 of the Business and Professions Code is amended to read:

4001. (a) There is in the Department of Consumer Affairs a California State Board of Pharmacy in which the administration and enforcement of this chapter is vested. The board consists of 10 members.

(b) The Governor shall appoint seven competent pharmacists, residing in different parts of the state, to serve as members of the board. The Governor shall appoint one public member and the Senate Committee



on Rules and the Speaker of the Assembly shall each appoint a public member who shall not be a licensee of the board, any other board under this division, or any board referred to in Section 1000 or 3600.

(c) At least five of the seven pharmacist appointees to the board shall be pharmacists who are actively engaged in the practice of pharmacy. Additionally, the membership of the board shall include at least one pharmacist representative from each of the following practice settings: an acute care hospital, a community pharmacy, and a long-term health care or skilled nursing facility.

(d) Members of the board shall be appointed for a term of four years. No person shall serve as a member of the board for more than two consecutive terms. Each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which the member was appointed, whichever first occurs. Vacancies occurring shall be filled by appointment for the unexpired term.

(e) Each member of the board shall receive a per diem and expenses as provided in Section 103.

(f) In accordance with Sections 101.1 and 473.1, this section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 1.5. Section 4001 of the Business and Professions Code is amended to read:

4001. (a) There is in the Department of Consumer Affairs a California State Board of Pharmacy in which the administration and enforcement of this chapter is vested. The board consists of 11 members.

(b) The Governor shall appoint seven competent pharmacists, residing in different parts of the state, to serve as members of the board. The Governor shall appoint two public members and the Senate Committee on Rules and the Speaker of the Assembly shall each

appoint a public member who shall not be a licensee of the board, any other board under this division, or any board referred to in Section 1000 or 3600.

(c) At least five of the seven pharmacist appointees to the board shall be pharmacists who are actively engaged in the practice of pharmacy. Additionally, the membership of the board shall include at least one pharmacist representative from each of the following practice settings: an acute care hospital, a community pharmacy, and a long-term health care or skilled nursing facility.

(d) Members of the board shall be appointed for a term of four years. No person shall serve as a member of the board for more than two consecutive terms. Each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which the member was appointed, whichever first occurs. Vacancies occurring shall be filled by appointment for the unexpired term.

(e) Each member of the board shall receive a per diem and expenses as provided in Section 103.

(f) In accordance with Sections 101.1 and 473.1, this section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 4002 of the Business and Professions Code is amended to read:

4002. (a) The board shall elect a president, a vice president, and a treasurer. The officers of the board shall be elected by a majority of the membership of the board.

(b) The principal office of the board shall be located in Sacramento. The board shall hold a meeting at least once in every four months. Six members of the board constitute a quorum.



SEC. 3. Section 4003 of the Business and Professions Code is amended to read:

4003. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter. The executive officer may or may not be a member of the board as the board may determine.

(b) The executive officer shall receive the compensation as established by the board with the approval of the Director of Finance. The executive officer shall also be entitled to travel and other expenses necessary in the performance of his or her duties.

(c) The executive officer shall maintain and update in a timely fashion records containing the names, titles, qualifications, and places of business of all persons subject to this chapter.

(d) The executive officer shall give receipts for all money received by him or her and pay it to the Department of Consumer Affairs, taking its receipt therefor. Besides the duties required by this chapter, the executive officer shall perform other duties pertaining to the office as may be required of him or her by the board.

(e) In accordance with Sections 101.1 and 473.1, this section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3.5. Section 4003 of the Business and Professions Code is amended to read:

4003. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter. The executive officer may or may not be a member of the board as the board may determine.

(b) The executive officer shall receive the compensation as established by the board with the approval of the Director of Finance. The executive officer

shall also be entitled to travel and other expenses necessary in the performance of his or her duties.

(c) The executive officer shall maintain and update in a timely fashion records containing the names, titles, qualifications, and places of business of all persons subject to this chapter.

(d) The executive officer shall give receipts for all money received by him or her and pay it to the Department of Consumer Affairs, taking its receipt therefor. Besides the duties required by this chapter, the executive officer shall perform other duties pertaining to the office as may be required of him or her by the board.

(e) In accordance with Sections 101.1 and 473.1, this section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 4004 of the Business and Professions Code is amended to read:

4004. No member of the board shall teach pharmacy in any of its branches, unless he or she teaches as either one of the following:

(a) A teacher in a public capacity and in a college of pharmacy.

(b) A teacher of an approved continuing education class as, or under the control of, an accredited provider of continuing education.

SEC. 5. Section 4005 of the Business and Professions Code is amended to read:

4005. (a) The board may adopt rules and regulations, not inconsistent with the laws of this state, as may be necessary for the protection of the public. Included therein shall be the right to adopt rules and regulations as follows: for the proper and more effective enforcement and administration of this chapter; pertaining to the practice of pharmacy; relating to the sanitation of persons and establishments licensed under this chapter; pertaining to establishments wherein any drug or device is compounded, prepared, furnished, or dispensed;



providing for standards of minimum equipment for establishments licensed under this chapter; and pertaining to the sale of drugs by or through any mechanical device.

(b) Notwithstanding any provision of this chapter to the contrary, the board may adopt regulations permitting the dispensing of drugs or devices in emergency situations, and permitting dispensing of drugs or devices pursuant to a prescription of a person licensed to prescribe in a state other than California where the person, if licensed in California in the same licensure classification would, under California law, be permitted to prescribe drugs or devices and where the pharmacist has first interviewed the patient to determine the authenticity of the prescription.

(c) The board may, by rule or regulation, adopt, amend, or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession. Every person who holds a license issued by the board shall be governed and controlled by the rules of professional conduct adopted by the board.

(d) The adoption, amendment, or repeal by the board of these or any other board rules or regulations shall be in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 6. Section 4007 of the Business and Professions Code is amended to read:

4007. (a) Nothing in Section 4005 shall be construed as authorizing the board to adopt rules of professional conduct relating to price fixing or advertising of commodities.

(b) Nothing in Section 4005 shall be construed as authorizing the board to adopt any rule or regulation that would require that a pharmacist personally perform any function for which the education, experience, training, and specialized knowledge of a pharmacist are not reasonably required. However, rules and regulations may require that the function be performed only under the



effective supervision of a pharmacist who shall have the overall responsibility for supervising all activities that take place in the pharmacy.

SEC. 7. Section 4008 of the Business and Professions Code is amended to read:

4008. (a) Except as provided by Section 159.5, the board may employ inspectors of pharmacy. The inspectors, whether the inspectors are employed by the board or the department's Division of Investigation, may inspect during business hours all pharmacies, medical device retailers, dispensaries, stores, or places in which drugs or devices are compounded, prepared, furnished, dispensed, or stored. Inspectors whose principal duties are the inspection of pharmacies, and premises operated or conducted by a wholesaler, shall be pharmacists.

(b) Notwithstanding subdivision (a), a pharmacy inspector may inspect or examine a physician's office or clinic that does not have a permit under Section 4180 or 4190 only to the extent necessary to determine compliance with and to enforce either Section 4080 or 4081.

(c) (1) Any pharmacy inspector employed by the board or the department's Division of Investigation shall have the authority, as a public officer, to arrest, without warrant, any person whenever the officer has reasonable cause to believe that the person to be arrested has, in his or her presence, violated any provision of this chapter or of Division 10 (commencing with Section 11000) of the Health and Safety Code. If the violation is a felony, or if the arresting officer has reasonable cause to believe that the person to be arrested has violated any provision that is declared to be a felony, although no felony has in fact been committed, he or she may make an arrest although the violation or suspected violation did not occur in his or her presence.

(2) In any case in which an arrest authorized by this subdivision is made for an offense declared to be a misdemeanor, and the person arrested does not demand to be taken before a magistrate, the arresting inspector may, instead of taking the person before a magistrate,



follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. That chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

(d) There shall be no civil liability on the part of, and no cause of action shall arise against, any person, acting pursuant to subdivision (a) and within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest that is lawful, or that the arresting officer, at the time of the arrest, had reasonable cause to believe was lawful. No inspector shall be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

(e) Any inspector may serve all processes and notices throughout the state.

SEC. 7.5. Section 4008 of the Business and Professions Code is amended to read:

4008. (a) Except as provided by Section 159.5, the board may employ inspectors of pharmacy. The inspectors, whether the inspectors are employed by the board or the department's Division of Investigation, may inspect, during business hours all pharmacies, medical device retailers, dispensaries, stores, or places in which drugs or devices are compounded, prepared, furnished, dispensed, or stored. Any board inspector of pharmacy whose principal duties include either (1) the inspection and investigation of pharmacies or pharmacists for alleged violations of this chapter, or (2) the supervision of other inspectors of pharmacy, shall be a pharmacist. For purposes of inspecting or investigating nonpharmacies or nonpharmacists pursuant to this chapter, a board inspector of pharmacy is not required to be a pharmacist.

(b) Notwithstanding subdivision (a), a pharmacy inspector may inspect or examine a physician's office or clinic that does not have a permit under Section 4180 or 4190 only to the extent necessary to determine



compliance with and to enforce either Section 4080 or 4081.

(c) (1) Any pharmacy inspector employed by the board or in the department's Division of Investigation shall have the authority, as a public officer, to arrest, without warrant, any person whenever the officer has reasonable cause to believe that the person to be arrested has, in his or her presence, violated any provision of this chapter or of Division 10 (commencing with Section 11000) of the Health and Safety Code. If the violation is a felony, or if the arresting officer has reasonable cause to believe that the person to be arrested has violated any provision that is declared to be a felony, although no felony has in fact been committed, he or she may make an arrest although the violation or suspected violation did not occur in his or her presence.

(2) In any case in which an arrest authorized by this subdivision is made for an offense declared to be a misdemeanor, and the person arrested does not demand to be taken before a magistrate, the arresting inspector may, instead of taking the person before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. That chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

(d) There shall be no civil liability on the part of, and no cause of action shall arise against, any person, acting pursuant to subdivision (a) and within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest that is lawful, or that the arresting officer, at the time of the arrest, had reasonable cause to believe was lawful. No inspector shall be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

(e) Any inspector may serve all processes and notices throughout the state.

SEC. 8. Section 4009 of the Business and Professions Code is repealed.



SEC. 9. Section 4016 of the Business and Professions Code is repealed.

SEC. 10. Section 4016 is added to the Business and Professions Code, to read:

4016. “Administer” means the direct application of a drug or device to the body of a patient or research subject by injection, inhalation, ingestion, or other means.

SEC. 11. Section 4017 of the Business and Professions Code is amended to read:

4017. “Authorized officers of the law” means inspectors of the California State Board of Pharmacy, inspectors of the Food and Drug Branch of the State Department of Health Services, and investigators of the department’s Division of Investigation or peace officers engaged in official investigations.

SEC. 12. Section 4018 of the Business and Professions Code is amended to read:

4018. “Board” means the California State Board of Pharmacy.

SEC. 13. Section 4020 of the Business and Professions Code is repealed.

SEC. 14. Section 4021 of the Business and Professions Code is amended to read:

4021. “Controlled substance” means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

SEC. 15. Section 4022 of the Business and Professions Code is amended to read:

4022. “Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without prescription” or words of similar import.

(b) Any device that bears the statement: “Caution: federal law restricts this device to sale by or on the order of a _____,” or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.



(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

SEC. 16. Section 4023 of the Business and Professions Code is amended to read:

4023. “Device” means any instrument, apparatus, machine, implant, in vitro reagent, or contrivance, including its components, parts, products, or the byproducts of a device, and accessories that are used or intended for either of the following:

(a) Use in the diagnosis, cure, mitigation, treatment, or prevention of disease in a human or any other animal.

(b) To affect the structure or any function of the body of a human or any other animal.

For purposes of this chapter, “device” does not include contact lenses, or any prosthetic or orthopedic device that does not require a prescription.

SEC. 17. Section 4024 of the Business and Professions Code is amended to read:

4024. (a) Except as provided in subdivision (b), “dispense” means the furnishing of drugs or devices upon a prescription from a physician, dentist, optometrist, podiatrist, veterinarian, or upon an order to furnish drugs or transmit a prescription from a certified nurse midwife, nurse practitioner, physician assistant, or pharmacist acting within the scope of his or her practice.

(b) “Dispense” also means and refers to the furnishing of drugs or devices directly to a patient by a physician, dentist, optometrist, podiatrist, or veterinarian, or by a certified nurse midwife, nurse practitioner, or physician assistant acting within the scope of his or her practice.

SEC. 18. Section 4025 of the Business and Professions Code is amended to read:

4025. “Drug” means any of the following:

(a) Articles recognized in the official United States Pharmacopoeia, official National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement of any of them.



(b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

(c) Articles (other than food) intended to affect the structure or any function of the body of humans or other animals.

(d) Articles intended for use as a component of any article specified in subdivision (a), (b), or (c).

SEC. 19. Section 4025.1 is added to the Business and Professions Code, to read:

4025.1. “Nonprescription drug” means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this state and the federal government.

SEC. 20. Section 4028 of the Business and Professions Code is amended to read:

4028. “Licensed hospital” means an institution, place, building, or agency that maintains and operates organized facilities for one or more persons for the diagnosis, care, and treatment of human illnesses to which persons may be admitted for overnight stay, and includes any institution classified under regulations issued by the State Department of Health Services as a general or specialized hospital, as a maternity hospital, or as a tuberculosis hospital, but does not include a sanitarium, rest home, a nursing or convalescent home, a maternity home, or an institution for treating alcoholics.

SEC. 21. Section 4029 of the Business and Professions Code is amended to read:

4029. (a) “Hospital pharmacy” means and includes a pharmacy, licensed by the board, located within any licensed hospital, institution, or establishment that maintains and operates organized facilities for the diagnosis, care, and treatment of human illnesses to which persons may be admitted for overnight stay and that meets all of the requirements of this chapter and the rules and regulations of the board.

(b) A hospital pharmacy also includes a pharmacy that may be located outside of the hospital, in another physical



plant that is regulated under a hospital's consolidated license issued pursuant to Section 1250.8 of the Health and Safety Code. As a condition of licensure by the board, the pharmacy in another physical plant shall provide pharmaceutical services only to registered hospital patients who are on the premises of the same physical plant in which the pharmacy is located. The pharmacy services provided shall be directly related to the services or treatment plan administered in the physical plant. Nothing in this paragraph shall be construed to restrict or expand the services that a hospital pharmacy may provide.

SEC. 22. Section 4030 of the Business and Professions Code is amended to read:

4030. "Intern pharmacist" means a person registered with the board pursuant to Section 4200 who shall have completed the educational requirements as determined by the board.

SEC. 23. Section 4031 of the Business and Professions Code is amended to read:

4031. "Laboratory" means a research, teaching, or testing laboratory not engaged in the dispensing or furnishing of drugs or devices but using dangerous drugs or dangerous devices for scientific or teaching purposes. Every laboratory shall maintain an established place of business and keep purchase records. Every laboratory shall be subject to the jurisdiction of the board.

SEC. 25. Section 4033 of the Business and Professions Code is amended to read:

4033. (a) "Manufacturer" means and includes every person who prepares, derives, produces, compounds, or repackages any drug or device except a pharmacy that manufactures on the immediate premises where the drug or device is sold to the ultimate consumer.

(b) Notwithstanding subdivision (a), "manufacturer" shall not mean a pharmacy compounding a drug for parenteral therapy, pursuant to a prescription, for delivery to another pharmacy for the purpose of delivering or administering the drug to the patient or patients named in the prescription, provided that neither



the components for the drug nor the drug are compounded, fabricated, packaged, or otherwise prepared prior to receipt of the prescription.

SEC. 26. Section 4034 of the Business and Professions Code is amended to read:

4034. (a) “Medical device retailer” is an area, place, or premises, other than a pharmacy, in and from which dangerous devices are sold, fitted, or dispensed pursuant to prescription. “Medical device retailer” includes, but is not limited to, any area, place, or premises described in a license issued by the board wherein dangerous devices are stored, possessed, prepared, manufactured, or repackaged, and from which the dangerous devices are furnished, sold, or dispensed at retail.

(b) “Medical device retailer” shall not include any area in a facility licensed by the State Department of Health Services where floor supplies, ward supplies, operating room supplies, or emergency room supplies of dangerous devices are stored or possessed solely for treatment of patients registered for treatment in the facility or for treatment of patients receiving emergency care in the facility.

(c) “Medical device retailer” shall not include any area of a home health agency licensed under Chapter 8 (commencing with Section 1725) of, or a hospice licensed under Chapter 8.5 (commencing with Section 1745) of, Division 2 of the Health and Safety Code, where the supplies specified in subdivision (c) of Section 4057 are stored or possessed solely for treatment of patients by a home health agency or licensed hospice, as long as all dangerous drugs or devices are furnished to these patients only upon the prescription or order of a physician, dentist, or podiatrist.

SEC. 27. Section 4037 of the Business and Professions Code is amended to read:

4037. (a) “Pharmacy” means an area, place, or premises licensed by the board in which the profession of pharmacy is practiced and where prescriptions are compounded. “Pharmacy” includes, but is not limited to, any area, place, or premises described in a license issued



by the board wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, or repackaged, and from which the controlled substances, dangerous drugs, or dangerous devices are furnished, sold, or dispensed at retail.

(b) “Pharmacy” shall not include any area in a facility licensed by the State Department of Health Services where floor supplies, ward supplies, operating room supplies, or emergency room supplies of dangerous drugs or dangerous devices are stored or possessed solely for treatment of patients registered for treatment in the facility or for treatment of patients receiving emergency care in the facility.

SEC. 28. Section 4040 of the Business and Professions Code is amended to read:

4040. (a) “Prescription” means an oral, written, or electronic transmission order that is both of the following:

(1) Given individually for the person or persons for whom ordered that includes all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the condition for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order.

(2) Issued by a physician, dentist, optometrist, podiatrist, or veterinarian licensed in this state.

(b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, that contains at least the



name and signature of the prescriber, the name or names and address of the patient or patients in a manner consistent with paragraph (3) of subdivision (b) of Section 11164 of the Health and Safety Code, the name and quantity of the drug prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist as long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and Safety Code shall prevail.

(c) “Electronic transmission prescription” includes both image and data prescriptions. “Electronic image transmission prescription” means any prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber. “Electronic data transmission prescription” means any prescription order, other than an electronic image transmission prescription, that is electronically transmitted from a licensed prescriber to a pharmacy.

(d) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(e) Nothing in the amendments made to this section (formerly Section 4036) at the 1969 Regular Session of the Legislature shall be construed as expanding or limiting the right that a chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

SEC. 29. Section 4043 of the Business and Professions Code is amended to read:

4043. “Wholesaler” means and includes every person who acts as a wholesale merchant, broker, jobber, or agent, who sells for resale, or negotiates for distribution any drug or device included in Section 4022. Unless otherwise authorized by law, a wholesaler may not store, warehouse, or authorize the storage or warehousing of drugs with any person or at any location not licensed by the board.

SEC. 30. Section 4051 of the Business and Professions Code is amended to read:



4051. (a) Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter.

(b) Notwithstanding any other law, a pharmacist may authorize the initiation of a prescription and otherwise provide clinical advice or information or patient consultation from outside a pharmacy premises if all of the following conditions are met:

(1) The clinical advice or information or patient consultation is provided either to a health care professional or to a patient of or resident in a licensed acute care hospital, health care facility, home health agency, or hospice.

(2) The pharmacist has access to prescription, patient profile, or other relevant medical information for purposes of patient and clinical consultation and advice.

(3) Access to the information described in paragraph (2) is secure from unauthorized access and use.

SEC. 31. Section 4052 of the Business and Professions Code is amended to read:

4052. (a) Notwithstanding any other provision of law, a pharmacist may:

(1) Furnish a reasonable quantity of compounded medication to a prescriber for office use by the prescriber.

(2) Transmit a valid prescription to another pharmacist.

(3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Perform the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration.



(B) Ordering drug therapy related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

(5) (A) Perform the following procedures or functions as part of the care provided by a health care facility, a licensed clinic in which there is physician oversight, or a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, in accordance with policies, procedures, or protocols of that facility, licensed clinic, or health care service plan developed by health professionals, including physicians, pharmacists, and registered nurses, that, at a minimum shall require that the medical records of the patient be available to both the patient's prescriber and the pharmacist, and that the procedures to be performed by the pharmacist relate to a condition for which the patient has first seen a physician:

(i) Ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration.

(ii) Ordering drug therapy related laboratory tests.

(iii) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(iv) Adjusting the drug regimen of a patient pursuant to a specific written order or authorization made by the patient's prescriber for the individual patient, and in accordance with the policies, procedures, or protocols of the health care facility, licensed clinic, or health care



service plan. Adjusting the drug regimen does not include substituting or selecting a different drug, except as authorized by Section 4073.

(B) A patient's prescriber may prohibit, by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist.

(C) The policies, procedures, or protocols referred to in this paragraph shall require that the pharmacist function as part of a multidisciplinary group that includes physicians and direct care registered nurses. The multidisciplinary group shall determine the appropriate participation of the pharmacist and the direct care registered nurse.

(6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices or furnish instructions to the patient or the patient's representative concerning the use of those devices.

(7) Provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals.

(b) Prior to performing any procedure authorized by paragraph (4) of subdivision (a), a pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility. Prior to performing any procedure authorized by paragraph (5) of subdivision (a), a pharmacist shall have either (1) successfully completed clinical residency training or (2) demonstrated clinical experience in direct patient care delivery.

(c) Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

(d) Nothing in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

SEC. 32. Section 4053 of the Business and Professions Code is amended to read:

4053. (a) Subdivision (a) of Section 4051 shall not apply to a manufacturer, wholesaler, or medical device



retailer if the board shall find that sufficient, qualified supervision is employed by the manufacturer, wholesaler, or medical device retailer to adequately safeguard and protect the public health, nor shall Section 4051 apply to any laboratory licensed under Section 351 of Title III of the Public Health Service Act (Public Law 78-410).

(b) Section 4051 shall not prohibit a veterinary food-animal drug retailer from selling or dispensing veterinary food-animal drugs for food-producing animals if the board finds that sufficient qualified supervision is employed by the veterinary food-animal drug retailer to adequately safeguard and protect the public health. Each person applying for an exemption shall meet the following requirements to obtain and maintain that exemption:

(1) The veterinary food-animal drug retailer shall be in the charge of an exempt person who has taken and passed an examination administered by the board and whose certificate of exemption is currently valid.

(2) Each premises maintained by a veterinary food-animal drug retailer shall have a license issued by the board and shall have an exempt person on the premises if veterinary food-animal drugs are furnished, sold, or dispensed.

(3) Only the exempt person shall prepare and affix the label to all veterinary food-animal drugs.

(4) The exempt person shall complete a training program to be approved by the board and qualify through examination on areas covering the essential knowledge necessary to properly read, fill, label, and dispense veterinary food-animal prescriptions.

(c) An exemptee certificate issued pursuant to this section is valid only at the location for which it is issued. The licensee and the exemptee shall each notify the board in writing within 30 days of the date on which the exemptee is no longer employed by the licensee at the location for which the exemptee certificate was issued. The licensee shall not operate without a pharmacist or an exemptee approved for that location by the board.



SEC. 33. Section 4055 of the Business and Professions Code is amended to read:

4055. Nothing in this chapter, nor any other law, shall prohibit the sale of devices to clinics that have been issued a clinic license pursuant to Article 13 (commencing with Section 4180) of this chapter, or to skilled nursing facilities or intermediate care facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of, or to home health agencies licensed pursuant to Chapter 8 (commencing with Section 1725) of, or to hospices licensed pursuant to Chapter 8.5 (commencing with Section 1745) of, Division 2 of, the Health and Safety Code, as long as the devices are furnished only upon the prescription or order of a physician, dentist, or podiatrist.

SEC. 34. Section 4056 of the Business and Professions Code is amended to read:

4056. (a) Notwithstanding any provision of this chapter, a licensed hospital that contains 100 beds or less, and that does not employ a full-time pharmacist, may purchase drugs at wholesale for administration, under the direction of a physician, to patients registered in the hospital or to emergency cases under treatment in the hospital. The hospital shall keep records of the kind and amounts of drugs so purchased and administered, and the records shall be available for inspection by all properly authorized personnel of the board.

(b) No hospital shall be entitled to the benefits of subdivision (a) until it has obtained a license from the board. Each license shall be issued to a specific hospital and for a specific location.

(c) Each application for a license under this section shall be made on a form furnished by the board. Upon the filing of the application and payment of the fee prescribed in subdivision (a) of Section 4400, the executive officer of the board shall issue a license authorizing the hospital to which it is issued to purchase drugs at wholesale pursuant to subdivision (a). The license shall be renewed annually on or before November 1 of each year upon payment of the renewal fee



prescribed in subdivision (b) of Section 4400 and shall not be transferable.

(d) The form of application for a license under this section shall contain the name and address of the applicant, the number of beds, whether the applicant is a licensed hospital, whether it does or does not employ a full-time pharmacist, the name of its chief medical officer, and the name of its administrator.

(e) The board may deny, revoke, or suspend a license issued under this section in the manner and for the grounds specified in Article 19 (commencing with Section 4300).

SEC. 35. Section 4057 of the Business and Professions Code is amended to read:

4057. (a) Except as provided in Sections 4006, 4240, and 4342, this chapter does not apply to the retail sale of nonprescription drugs that are not subject to Section 4022 and that are packaged or bottled in the manufacturer's or distributor's container and labeled in accordance with applicable federal and state drug labeling requirements.

(b) This chapter does not apply to dangerous devices, hypodermic needles and syringes, sterilized sutures, parenteral solutions of 50 cubic centimeters or over, sterile water U.S.P., sterile normal saline solution, medicinal gases, inhalation anesthetics, laboratory chemicals, ethyl chloride, fluoromethane, stains and dyes, diagnostic agents and contrast medium for X-ray examination, and medicated dressings, where the sale or furnishing is made to any of the following:

(1) A physician, dentist, podiatrist, pharmacist, medical technician, medical technologist, optometrist, or chiropractor holding a currently valid and unrevoked license and acting within the scope of his or her profession.

(2) A clinic, hospital, institution, or establishment holding a currently valid and unrevoked license or permit under Division 2 (commencing with Section 1200) of the Health and Safety Code, or Chapter 2 (commencing with Section 3300) of Division 3 of, or Part 2 (commencing



with Section 6250) of Division 6 of, the Welfare and Institutions Code.

(c) This chapter shall not apply to a home health agency licensed under Chapter 8 (commencing with Section 1725) of, or a hospice licensed under Chapter 8.5 (commencing with Section 1745) of, Division 2 of, the Health and Safety Code, when it purchases, stores, furnishes, or transports the following items in compliance with applicable law and regulations:

(1) Dangerous devices described in subdivision (b) of Section 4022, as long as these dangerous devices are furnished only upon the prescription or order of a physician, dentist, or podiatrist.

(2) Hypodermic needles and syringes.

(3) Irrigation solutions of 50 cubic centimeters or greater.

(d) The board may, by regulation, add to or delete dangerous drugs or dangerous devices from the exemptions provided in subdivision (b) or (c), for good cause shown.

(e) This chapter does not apply to the storage of devices in secure central or ward supply areas of a clinic, hospital, institution, or establishment holding a currently valid and unrevoked license or permit pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or pursuant to Chapter 2 (commencing with Section 3300) of Division 3 of, or Part 2 (commencing with Section 6250) of Division 6 of, the Welfare and Institutions Code.

(f) This chapter does not apply to the retail sale of vitamins, mineral products, or combinations thereof or to foods, supplements, or nutrients used to fortify the diet of humans or other animals or poultry and labeled as such that are not subject to Section 4022 and that are packaged or bottled in the manufacturer's or distributor's container and labeled in accordance with applicable federal and state labeling requirements.

(g) This chapter does not apply to the furnishing of dangerous drugs and dangerous devices to recognized schools of nursing. These dangerous drugs and dangerous



devices shall not include controlled substances. The dangerous drugs and dangerous devices shall be used for training purposes only, and not for the cure, mitigation, or treatment of disease in humans. Recognized schools of nursing for purposes of this subdivision are those schools recognized as training facilities by the California Board of Registered Nursing.

SEC. 36. Section 4058 of the Business and Professions Code is amended to read:

4058. Every person holding a license issued under this chapter to operate a premises shall display the original license and current renewal license upon the licensed premises in a place where it may be clearly read by the public.

SEC. 37. Section 4059.5 is added to the Business and Professions Code, to read:

4059.5. (a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and must be delivered to the licensed premises and signed for and received by the pharmacist-in-charge or, in his or her absence, another pharmacist designated by the pharmacist-in-charge. Where a licensee is permitted to operate through an exemptee, the exemptee may sign for and receive the delivery.

(b) A dangerous drug or dangerous device transferred, sold, or delivered to any person within this state shall be transferred, sold, or delivered only to an entity licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's agent.

(c) Notwithstanding subdivisions (a) and (b), deliveries to a hospital pharmacy may be made to a central receiving location within the hospital. However, the dangerous drugs or dangerous devices shall be delivered to the licensed pharmacy premises within one working day following receipt by the hospital, and the pharmacist on duty at that time shall immediately inventory the drugs or devices.

(d) Notwithstanding any other provision of law, a dangerous drug or dangerous device may be ordered by



and provided to a manufacturer, physician, dentist, podiatrist, optometrist, veterinarian, or laboratory, or a physical therapist acting within the scope of his or her license. Any person or entity receiving delivery of any dangerous drugs or devices, or a duly authorized representative of the person or entity, shall sign for the receipt of the dangerous drugs or dangerous devices.

(e) A dangerous drug or dangerous device shall not be transferred, sold, or delivered to any person outside this state, whether foreign or domestic, unless the transferor, seller, or deliverer does so in compliance with the laws of this state and of the United States and of the state or country to which the drugs or devices are to be transferred, sold, or delivered. Compliance with the laws of this state and the United States and of the state or country to which the drugs or devices are to be delivered shall include, but not be limited to, determining that the recipient of the drugs or devices is authorized by law to receive the drugs or devices.

SEC. 40. Section 4060 of the Business and Professions Code is amended to read:

4060. No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, or veterinarian, when in stock in containers correctly labeled with the name and address of the supplier or producer.

SEC. 41. Section 4061 of the Business and Professions Code is amended to read:

4061. No manufacturer's sales representative shall distribute any dangerous drug or dangerous device as a complimentary sample without the written request of a physician, dentist, podiatrist, or veterinarian. Each written request shall contain the names and addresses of the supplier and the requester, the name and quantity of the specific dangerous drug desired, and shall be



preserved by the supplier with the records required by Section 4059.

SEC. 42. Section 4062 of the Business and Professions Code is amended to read:

4062. Notwithstanding Section 4059 or any other provision of law, a pharmacist may, in good faith, furnish a dangerous drug or dangerous device in reasonable quantities without a prescription during a federal, state, or local emergency, to further the health and safety of the public. A record containing the date, name and address of the person to whom the drug or device is furnished, and the name, strength and quantity of the drug or device furnished shall be maintained. The pharmacist shall communicate this information to the patient's attending physician as soon as possible. Notwithstanding Section 4060 or any other provision of law, a person may possess a dangerous drug or dangerous device furnished without prescription pursuant to this section.

SEC. 43. Section 4063 of the Business and Professions Code is amended to read:

4063. No prescription for any dangerous drug or dangerous device may be refilled except upon authorization of the prescriber. The authorization may be given orally or at the time of giving the original prescription. No prescription for any dangerous drug that is a controlled substance may be designated refillable as needed.

SEC. 44. Section 4064 of the Business and Professions Code is amended to read:

4064. (a) A prescription for a dangerous drug or dangerous device may be refilled without the prescriber's authorization if the prescriber is unavailable to authorize the refill and if, in the pharmacist's professional judgment, failure to refill the prescription might interrupt the patient's ongoing care and have a significant adverse effect on the patient's well-being.

(b) The pharmacist shall inform the patient that the prescription was refilled pursuant to this section.



(c) The pharmacist shall inform the prescriber within a reasonable period of time of any refills dispensed pursuant to this section.

(d) Prior to refilling a prescription pursuant to this section, the pharmacist shall make every reasonable effort to contact the prescriber. The pharmacist shall make an appropriate record, including the basis for proceeding under this section.

(e) The prescriber shall not incur any liability as the result of a refilling of a prescription pursuant to this section.

(f) Notwithstanding Section 4060 or any other law, a person may possess a dangerous drug or dangerous device furnished without prescription pursuant to this section.

SEC. 45. Section 4070 of the Business and Professions Code is amended to read:

4070. Except as provided in Section 4019, an oral or an electronic data transmission prescription as defined in subdivision (c) of Section 4040 shall as soon as practicable be reduced to writing by the pharmacist and shall be filled by, or under the direction of, the pharmacist. The pharmacist need not reduce to writing the address, telephone number, license classification, federal registry number of the prescriber, or the address of the patient or patients if the information is readily retrievable in the pharmacy.

SEC. 46. Section 4071 of the Business and Professions Code is amended to read:

4071. Notwithstanding any other provision of law, a prescriber may authorize his or her agent on his or her behalf to orally or electronically transmit a prescription to the furnisher. The furnisher shall make a reasonable effort to determine that the person who transmits the prescription is authorized to do so and shall record the name of the authorized agent of the prescriber who transmits the order.

This section shall not apply to orders for Schedule II controlled substances.

SEC. 47. Section 4072 of the Business and Professions Code is amended to read:



4072. (a) Notwithstanding any other provision of law, a pharmacist, registered nurse, licensed vocational nurse, licensed psychiatric technician, or other healing arts licentiate, if so authorized by administrative regulation, who is employed by or serves as a consultant for a licensed skilled nursing, intermediate care, or other health care facility, may orally or electronically transmit to the furnisher a prescription lawfully ordered by a person authorized to prescribe drugs or devices pursuant to Sections 4040 and 4070. The furnisher shall take appropriate steps to determine that the person who transmits the prescription is authorized to do so and shall record the name of the person who transmits the order. This section shall not apply to orders for Schedule II controlled substances.

(b) In enacting this section, the Legislature recognizes and affirms the role of the Department of Health Services in regulating drug order processing requirements for licensed health care facilities as set forth in Title 22 of the California Code of Regulations as they may be amended from time to time.

SEC. 48. Section 4073 of the Business and Professions Code is amended to read:

4073. (a) A pharmacist filling a prescription order for a drug product prescribed by its trade or brand name may select another drug product with the same active chemical ingredients of the same strength, quantity, and dosage form, and of the same generic drug name as determined by the United States Adopted Names (USAN) and accepted by the federal Food and Drug Administration (FDA), of those drug products having the same active chemical ingredients.

(b) In no case shall a selection be made pursuant to this section if the prescriber personally indicates, either orally or in his or her own handwriting, “Do not substitute,” or words of similar meaning. Nothing in this subdivision shall prohibit a prescriber from checking a box on a prescription marked “Do not substitute”; provided that the prescriber personally initials the box or checkmark.



(c) Selection pursuant to this section is within the discretion of the pharmacist, except as provided in subdivision (b). The person who selects the drug product to be dispensed pursuant to this section shall assume the same responsibility for selecting the dispensed drug product as would be incurred in filling a prescription for a drug product prescribed by generic name. There shall be no liability on the prescriber for an act or omission by a pharmacist in selecting, preparing, or dispensing a drug product pursuant to this section. In no case shall the pharmacist select a drug product pursuant to this section unless the drug product selected costs the patient less than the prescribed drug product. Cost, as used in this subdivision, is defined to include any professional fee that may be charged by the pharmacist.

(d) This section shall apply to all prescriptions, including those presented by or on behalf of persons receiving assistance from the federal government or pursuant to the California Medical Assistance Program set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(e) When a substitution is made pursuant to this section, the use of the cost-saving drug product dispensed shall be communicated to the patient and the name of the dispensed drug product shall be indicated on the prescription label, except where the prescriber orders otherwise.

SEC. 49. Section 4074 of the Business and Professions Code is amended to read:

4074. (a) A pharmacist shall inform a patient orally or in writing of the harmful effects of a drug dispensed by prescription if the drug poses substantial risk to the person consuming the drug when taken in combination with alcohol or if the drug may impair a person's ability to drive a motor vehicle, whichever is applicable, and provided the drug is determined by the board pursuant to subdivision (b) to be a drug or drug type for which this warning shall be given.



(b) The board may by regulation require additional information or labeling.

(c) This section shall not apply to drugs furnished to patients in conjunction with treatment or emergency services provided in health facilities.

(d) A health facility shall establish and implement a written policy to ensure that each patient shall receive information regarding each medication given at the time of discharge. This information shall include the use and storage of each medication, the precautions and relevant warnings, and the importance of compliance with directions. This information shall be given by a pharmacist or registered nurse, unless already provided by a patient's prescriber, and the written policy shall be developed in collaboration with a physician, a pharmacist, and a registered nurse. The written policy shall be approved by the medical staff. Nothing in this subdivision or any other provision of law shall be construed to require that only a pharmacist provide this consultation.

SEC. 50. Section 4076 of the Business and Professions Code is amended to read:

4076. (a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

(1) Except where the prescriber orders otherwise, either the manufacturer's trade name of the drug or the generic name and the name of the manufacturer. Commonly used abbreviations may be used. Preparations containing two or more active ingredients may be identified by the manufacturer's trade name or the commonly used name or the principal active ingredients.

(2) The directions for the use of the drug.

(3) The name of the patient or patients.

(4) The name of the prescriber.

(5) The date of issue.

(6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.

- (7) The strength of the drug or drugs dispensed.
- (8) The quantity of the drug or drugs dispensed.
- (9) The expiration date of the effectiveness of the drug dispensed.
- (10) The condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.

(b) If a pharmacist dispenses a prescribed drug by means of a unit dose medication system, as defined by administrative regulation, for a patient in a skilled nursing, intermediate care, or other health care facility, the requirements of this section will be satisfied if the unit dose medication system contains the aforementioned information or the information is otherwise readily available at the time of drug administration.

SEC. 51. Section 4077 of the Business and Professions Code is amended to read:

4077. (a) Except as provided in subdivisions (b) and (c), no person shall dispense any dangerous drug upon prescription except in a container correctly labeled with the information required by Section 4076.

(b) Physicians, dentists, podiatrists, and veterinarians may personally furnish any dangerous drug prescribed by them to the patient for whom prescribed, provided that the drug is properly labeled to show all information required in Section 4076 except the prescription number.

(c) Devices that bear the legend “Caution: federal law restricts this device to sale by or on the order of a _____,” or words of similar meaning, are exempt from the requirements of Section 4076, and Section 111480 of the Health and Safety Code, when provided to patients in skilled nursing facilities or intermediate care facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(d) The following notification shall be affixed to all quantities of dimethyl sulfoxide (DMSO) prescribed by a physician, or dispensed by a pharmacy pursuant to the order of a physician in California: “Warning: DMSO may



be hazardous to your health. Follow the directions of the physician who prescribed the DMSO for you.”

(e) The label of any retail package of DMSO shall include appropriate precautionary measures for proper handling and first aid treatment and a warning statement to keep the product out of reach of children.

SEC. 52. Section 4078 is added to the Business and Professions Code, to read:

4078. (a) No person shall place a false or misleading label on a prescription.

(b) No prescriber shall direct that a prescription be labeled with any information that is false or misleading.

SEC. 53. Section 4080 of the Business and Professions Code is amended to read:

4080. All stock of any dangerous drug or dangerous device or of shipments through a customs broker or carrier shall be, at all times during business hours, open to inspection by authorized officers of the law.

SEC. 54. Section 4081 of the Business and Professions Code is amended to read:

4081. (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, medical device retailer, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, wholesaler, veterinary food-animal drug retailer, or medical device retailer shall be jointly responsible, with

the pharmacist-in-charge or exemptee, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or exemptee shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or exemptee had no knowledge, or in which he or she did not knowingly participate.

SEC. 55. Section 4082 of the Business and Professions Code is amended to read:

4082. When called upon by an inspector, the owner or manager of any entity licensed by the board, or other store, shop, building, or premises retailing, wholesaling, or storing drugs or devices shall furnish the inspector with the names of the owner or owners, manager or managers, and employees together with a brief statement of the capacity in which these persons are employed on the premises.

SEC. 56. Section 4100 of the Business and Professions Code is amended to read:

4100. Within 30 days after changing his or her address of record with the board or after changing his or her name according to law, every pharmacist, intern pharmacist, technician, or exemptee shall notify the executive officer of the board of the change of address or change of name.

SEC. 57. Section 4101 of the Business and Professions Code is amended to read:

4101. (a) Any pharmacist who takes charge of, or acts as pharmacist-in-charge of a pharmacy or other entity licensed by the board, who terminates his or her employment at the pharmacy or other entity, shall notify the board within 30 days of the termination of employment.

(b) Any exemptee who takes charge of, or acts as manager of, a wholesaler, medical device retailer, or veterinary food-drug animal retailer, who terminates his or her employment at that entity shall notify the board within 30 days of the termination of employment.

SEC. 58. Section 4102 of the Business and Professions Code is amended to read:



4102. Notwithstanding Section 2038 or any other provision of law, a pharmacist may perform skin puncture for purposes of training and assisting patients in the performance of routine drug-therapy related patient assessment procedures to monitor medical conditions including, but not limited to, diabetes. Any pharmacist who performs the service shall not be in violation of Section 2052.

SEC. 59. Section 4103 of the Business and Professions Code is amended to read:

4103. Notwithstanding Section 2038, or any other provision of law, a pharmacist may take a person's blood pressure and may inform the person of the results, render an opinion as to whether the reading is within a high, low, or normal range, and may advise the person to consult a physician of the person's choice. Pharmacists rendering this service shall utilize commonly accepted community standards in rendering opinions and referring patients to physicians. Enforcement of this section is vested in the Board of Pharmacy of the State of California. Any pharmacist who performs this service shall not be in violation of Section 2052.

SEC. 60. Section 4104 is added to the Business and Professions Code, to read:

4104. (a) Pharmacies shall have in place procedures for taking action to protect the public when a licensed individual employed by or with the pharmacy is known to be chemically, mentally, or physically impaired to the extent it affects his or her ability to practice the profession or occupation authorized by his or her license.

(b) Pharmacies shall have in place procedures for taking action to protect the public when a licensed individual employed by or with the pharmacy is known to have engaged in the theft or diversion or self-use of prescription drugs belonging to the pharmacy.

(c) The board may, by regulation, establish requirements for reporting to the board conduct or incidents described in subdivision (a) or (b).

SEC. 61. Section 4105 is added to the Business and Professions Code, to read:



4105. (a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer, medical device retailer, or wholesaler, the exemptee, shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically.

(e) (1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request, grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b), and (c) be kept on the licensed premises.

(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter.

SEC. 62. Section 4110 of the Business and Professions Code is amended to read:

4110. (a) No person shall conduct a pharmacy in the State of California unless he or she has obtained a license from the board. A license shall be required for each pharmacy owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a pharmacy in more than one location. The license shall be renewed annually. The



board may, by regulation, determine the circumstances under which a license may be transferred.

(b) The board may, at its discretion, issue a temporary permit, when the ownership of a pharmacy is transferred from one person to another, upon the conditions and for any periods of time as the board determines to be in the public interest. A temporary permit fee shall be established by the board at an amount not to exceed the annual fee for renewal of a permit to conduct a pharmacy.

SEC. 63. Section 4111 of the Business and Professions Code is amended to read:

4111. (a) Except as otherwise provided in subdivision (b) or (d), the board shall not issue or renew any license to conduct a pharmacy to any of the following:

(1) A person or persons authorized to prescribe or write a prescription, as specified in Section 4040, in the State of California.

(2) A person or persons with whom a person or persons specified in paragraph (1) shares a community or other financial interest in the permit sought.

(3) Any corporation that is controlled by, or in which 10 percent or more of the stock is owned by a person or persons prohibited from pharmacy ownership by paragraph (1) or (2).

(b) Subdivision (a) shall not preclude the issuance of a permit for an inpatient hospital pharmacy to the owner of the hospital in which it is located.

(c) The board may require any information the board deems is reasonably necessary for the enforcement of this section.

(d) Subdivision (a) shall not preclude the issuance of a new or renewal license for a pharmacy to be owned or owned and operated by a person licensed on or before August 1, 1981, under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and qualified on or before August 1, 1981, under subsection (d) of Section 1310 of Title XIII of the federal Public Health Service Act, as amended, whose ownership



includes persons defined pursuant to paragraphs (1) and (2) of subdivision (a).

SEC. 64. Section 4112 of the Business and Professions Code is amended to read:

4112. (a) Any pharmacy located outside this state that ships, mails, or delivers, in any manner, controlled substances, dangerous drugs, or dangerous devices into this state shall be considered a nonresident pharmacy.

(b) All nonresident pharmacies shall register with the board.

(c) A nonresident pharmacy shall disclose to the board the location, names, and titles of (1) its agent for service of process in this state, (2) all principal corporate officers, if any, (3) all general partners, if any, and (4) all pharmacists who are dispensing controlled substances, dangerous drugs, or dangerous devices to residents of this state. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, partner, or pharmacist.

(d) All nonresident pharmacies shall comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(e) All nonresident pharmacies shall maintain records of controlled substances, dangerous drugs, or dangerous devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed.

(f) Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide



a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(g) The board shall adopt regulations that apply the same requirements or standards for oral consultation to a nonresident pharmacy that operates pursuant to this section and ships, mails, or delivers any controlled substances, dangerous drugs, or dangerous devices to residents of this state, as are applied to an in-state pharmacy that operates pursuant to Section 4037 when the pharmacy ships, mails, or delivers any controlled substances, dangerous drugs, or dangerous devices to residents of this state. The board shall not adopt any regulations that require face-to-face consultation for a prescription that is shipped, mailed, or delivered to the patient. The regulations adopted pursuant to this subdivision shall not result in any unnecessary delay in patients receiving their medication.

(h) The registration fee shall be the fee specified in subdivision (a) of Section 4400.

(i) The registration requirements of this section shall apply only to a nonresident pharmacy that ships, mails, or delivers controlled substances, dangerous drugs, and dangerous devices into this state pursuant to a prescription.

(j) Nothing in this section shall be construed to authorize the dispensing of contact lens by nonresident pharmacists except as provided by Section 4124.

SEC. 65. Section 4113 of the Business and Professions Code is amended to read:

4113. (a) Every pharmacy shall designate a pharmacist-in-charge and within 30 days thereof, shall notify the board in writing of the identity and license number of that pharmacist and the date he or she was designated.

(b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.



(c) Every pharmacy shall notify the board within 30 days of the date when a pharmacist ceases to be a pharmacist-in-charge.

SEC. 66. Section 4114 of the Business and Professions Code is amended to read:

4114. An intern pharmacist may perform any activities pertaining to the practice of pharmacy as the board may determine by regulation. Whenever in this chapter the performance of an act is restricted to a pharmacist, the act may be performed by an intern pharmacist under the supervision of a pharmacist. The pharmacist shall not supervise more than one intern pharmacist at any one time.

SEC. 67. Section 4115 of the Business and Professions Code, as amended by Section 5 of Chapter 890 of the Statutes of 1996, is amended to read:

4115. (a) Notwithstanding any other provision of law, a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.

(b) This section does not authorize the performance of any tasks specified in subdivision (a) by a pharmacy technician without a pharmacist on duty, nor does this section authorize the use of a pharmacy technician to perform tasks specified in subdivision (a) except under the direct supervision and control of a pharmacist.

(c) This section does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist.

(d) The board shall adopt regulations to specify tasks pursuant to subdivision (a) that a pharmacy technician may perform under the direct supervision and control of a pharmacist. Any pharmacy that employs a pharmacy technician to perform tasks specified in subdivision (a) shall do so in conformity with the regulations adopted by the board pursuant to this subdivision.

(e) (1) No person shall act as a pharmacy technician without first being registered with the board as a pharmacy technician as set forth in Section 4202.



(2) The registration requirements in paragraph (1) and Section 4202 shall not apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital until July 1, 1997.

(3) The registration requirements in paragraph (1) and Section 4202 shall not apply during the first year of employment for a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, or for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

(f) The performance of duties by a pharmacy technician shall be under the direct supervision and control of a pharmacist. The pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician. A pharmacy technician may perform the duties, as specified in subdivision (a), only under the immediate, personal supervision and control of a pharmacist. Any pharmacist responsible for a pharmacy technician shall be on the premises at all times, and the pharmacy technician shall be within the pharmacist's view. A pharmacist shall indicate verification of the prescription by initialing the prescription label before the medication is provided to the patient.

This subdivision shall not apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility. Notwithstanding the exemption in this subdivision, the requirements of subdivisions (a) and (b) shall apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility.

(g) (1) The ratio of pharmacy technicians performing the tasks specified in subdivision (a) to pharmacists shall not exceed one to one, except that this ratio shall not



apply to personnel performing clerical functions pursuant to Section 4116 or 4117. This ratio is applicable to all practice settings, except for an inpatient of a licensed health facility, a patient of a licensed home health agency, as specified in paragraph (2), an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, and for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

(2) The board may adopt regulations establishing the ratio of pharmacy technicians performing the tasks specified in subdivision (a) to pharmacists applicable to the filling of prescriptions of an inpatient of a licensed health facility and for a patient of a licensed home health agency. Any ratio established by the board pursuant to this subdivision shall allow, at a minimum, at least one pharmacy technician for each pharmacist, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117.

SEC. 68. Section 4116 of the Business and Professions Code is amended to read:

4116. (a) No person other than a pharmacist, an intern pharmacist, an authorized officer of the law, or a person authorized to prescribe shall be permitted in that area, place, or premises described in the license issued by the board wherein controlled substances or dangerous drugs or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, dispensed, or repackaged. However, a pharmacist shall be responsible for any individual who enters the pharmacy for the purposes of receiving consultation from the pharmacist or performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the pharmacy if the pharmacist remains present in the pharmacy during all times as the authorized individual is present.

(b) The board may, by regulation, establish reasonable security measures consistent with this section in order to



prevent unauthorized persons from gaining access to the area, place or premises or to the controlled substances or dangerous drugs or dangerous devices therein.

SEC. 69. Section 4117 of the Business and Professions Code is amended to read:

4117. No person other than a pharmacist, an intern pharmacist, a pharmacy technician, an authorized officer of the law, a person authorized to prescribe, a registered nurse, a licensed vocational nurse, a person who enters the pharmacy for purposes of receiving consultation from a pharmacist, or a person authorized by the pharmacist in charge to perform clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the pharmacy shall be permitted in that area, place, or premises described in the license issued by the board to a licensed hospital wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, dispensed, or repackaged.

SEC. 70. Section 4118 of the Business and Professions Code is amended to read:

4118. (a) When, in the opinion of the board, a high standard of patient safety, consistent with good patient care, can be provided by the licensure of a pharmacy that does not meet all of the requirements for licensure as a pharmacy, the board may waive any licensing requirements.

(b) When, in the opinion of the board, a high standard of patient safety, consistent with good patient care, can be provided by the licensure of a hospital pharmacy, as defined by subdivision (a) of Section 4029, that does not meet all of the requirements for licensure as a hospital pharmacy, the board may waive any licensing requirements. However, when a waiver of any requirements is granted by the board, the pharmaceutical services to be rendered by this pharmacy shall be limited to patients registered for treatment in the hospital, whether or not they are actually staying in the hospital, or to emergency cases under treatment in the hospital.



SEC. 71. Section 4119 of the Business and Professions Code is amended to read:

4119. Notwithstanding any other provision of law, a pharmacy may furnish a dangerous drug or dangerous device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with facility regulations of the State Department of Health Services set forth in Title 22 of the California Code of Regulations and the requirements set forth in Section 1261.5 of the Health and Safety Code. These emergency supplies shall be approved by the facility's patient care policy committee or pharmaceutical service committee and shall be readily available to each nursing station. Section 1261.5 of the Health and Safety Code limits the number of oral dosage form or suppository form drugs in these emergency supplies to 24.

SEC. 72. Section 4119.5 is added to the Business and Professions Code, to read:

4119.5. (a) A pharmacy can transfer a reasonable supply of dangerous drugs to another pharmacy.

(b) A pharmacy may repackage and furnish to a prescriber a reasonable quantity of dangerous drugs and dangerous devices for prescriber office use.

SEC. 73. Section 4120 of the Business and Professions Code is amended to read:

4120. (a) A nonresident pharmacy shall not sell or distribute dangerous drugs or dangerous devices in this state through any person or media other than a wholesaler who has obtained a license pursuant to this chapter or through a selling or distribution outlet that is licensed as a wholesaler pursuant to this chapter without registering as a nonresident pharmacy.

(b) Applications for a nonresident pharmacy registration shall be made on a form furnished by the board. The board may require any information as the board deems reasonably necessary to carry out the purposes of this section.

(c) The Legislature, by enacting this section, does not intend a license issued to any nonresident pharmacy



pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any nonresident pharmacy.

(d) The Legislature, by enacting this section, does not intend a license issued to any nonresident pharmacy pursuant to this section to serve as any evidence that the nonresident pharmacy is doing business within this state.

SEC. 74. Section 4122 of the Business and Professions Code is amended to read:

4122. (a) In every pharmacy there shall be prominently posted in a place conspicuous to and readable by prescription drug consumers a notice provided by the board concerning the availability of prescription price information, the possibility of generic drug product selection, and the type of services provided by pharmacies. The format and wording of the notice shall be adopted by the board by regulation. A written receipt that contains the required information on the notice may be provided to consumers as an alternative to posting the notice in the pharmacy.

(b) A pharmacist, or a pharmacist's employee, shall give the current retail price for any drug sold at the pharmacy upon request from a consumer, however that request is communicated to the pharmacist or employee.

(c) If a requester requests price information on more than five prescription drugs and does not have valid prescriptions for all of the drugs for which price information is requested, a pharmacist may require the requester to meet any or all of the following requirements:

(1) The request shall be in writing.

(2) The pharmacist shall respond to the written request within a reasonable period of time. A reasonable period of time is deemed to be 10 days, or the time period stated in the written request, whichever is later.

(3) A pharmacy may charge a reasonable fee for each price quotation, as long as the requester is informed that there will be a fee charged.



(4) No pharmacy shall be required to respond to more than three requests as described in this subdivision from any one person or entity in a six-month period.

(d) This section shall not apply to a pharmacy that is located in a licensed hospital and that is accessible only to hospital medical staff and personnel.

(e) Notwithstanding any other provision of this section, no pharmacy shall be required to do any of the following:

(1) Provide the price of any controlled substance in response to a telephone request.

(2) Respond to a request from a competitor.

(3) Respond to a request from an out-of-state requester.

SEC. 76. Section 4130 of the Business and Professions Code is amended to read:

4130. (a) No person shall conduct a medical device retailer in the State of California unless he or she has obtained a license from the board. A license shall be required for each medical device retailer owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a medical device retailer in more than one location. The license shall be renewed annually and shall not be transferable.

(b) A warehouse owned by a medical device retailer, the primary purpose of which is storage, not dispensing of dangerous devices to patients, shall be licensed at a fee one-half of that for a medical device retailer. There shall be no separate or additional license fee for warehouse premises owned by a medical device retailer that are physically connected to the retail premises or that share common access.

(c) The board may, at its discretion, issue a temporary license, when the ownership of a medical device retailer is transferred from one person to another, upon any conditions and for the periods of time as the board determines to be in the public interest. A temporary license fee shall be established by the board at an amount



not to exceed the annual fee for renewal of a license to conduct a medical device retailer.

(d) Notwithstanding any other provision of law, a medical device retailer may furnish a prescription device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with facility regulations of the State Department of Health Services set forth in Title 22 of the California Code of Regulations.

SEC. 77. Section 4131 of the Business and Professions Code is amended to read:

4131. (a) The following minimum standards shall apply to all medical device retailers licensed by the board:

(1) Each retailer shall store dangerous devices in a secure, lockable area.

(2) Each retailer shall maintain the premises, fixtures, and equipment in a clean and orderly condition. The premises shall be dry, well-ventilated, and have adequate lighting.

(b) The board may, by regulation, impose any other minimum standards pertaining to acquisition, storage, and maintenance of dangerous devices or other goods, or to maintenance, or condition of the licensed premises of any medical device retailer as the board determines are reasonably necessary.

SEC. 78. Section 4132 of the Business and Professions Code is amended to read:

4132. (a) Each medical device retailer shall have written policies and procedures related to medical device retailer handling and dispensing of dangerous devices. Those written policies and procedures shall include, but not be limited to:

(1) Training of staff, patients, and caregivers.

(2) Cleaning, storage, and maintenance of dangerous devices and equipment.

(3) Emergency services.

(4) Recordkeeping requirements.

(5) Storage and security requirements.

(6) Quality assurance.



(b) The medical device retailer shall make consultation available to the patient or primary caregiver about proper use of dangerous devices and related supplies furnished by the medical device retailer. The medical device retailer shall notify the patient or primary care giver that consultation is available.

(c) Each retailer shall ensure all personnel of the medical device retailer who engage in the taking of orders for, the selling of, or the fitting of dangerous devices shall have training and demonstrate initial and continuing competence in the order-taking, fitting, and sale of dangerous devices that the medical device retailer furnishes. The pharmacist-in-charge or exemptee shall be jointly responsible with the owner or owners of the medical device retailer for compliance with the requirement.

(d) Each retailer shall prepare and maintain records of training and demonstrated competence for each individual employed or retained by the retailer. The records shall be maintained for three years from and after the last date of employment.

(e) Each retailer shall have an ongoing, documented quality assurance program that includes, but is not limited to, the following:

(1) Monitoring personnel performance.

(2) Storage, maintenance, and dispensing of dangerous devices.

(f) The records and documents specified in subdivisions (a) and (e) shall be maintained for three years from the date of making. The records and documents in subdivisions (a), (d), and (e), shall be, at all times during business hours, open to inspection by authorized officers of the law.

SEC. 79. Section 4133 of the Business and Professions Code is amended to read:

4133. Section 4051 shall not prohibit a medical device retailer from selling or dispensing dangerous devices if the board finds that sufficient qualified supervision is employed by the medical device retailer to adequately safeguard and protect the public health. Each person

applying for an exemption shall meet the following requirements to obtain and maintain that exemption:

(a) The medical device retailer shall be in charge of a pharmacist or an exempt person who has taken and passed an examination administered by the board and whose certificate of exemption is currently valid.

(b) The pharmacist or exempt person shall be on the premises at all times dangerous devices are available for sale or fitting unless dangerous devices are stored separately from other merchandise and are under the exclusive control of the pharmacist or exemptee. A pharmacist or an exemptee need not be present in the warehouse facility of a medical device retailer unless the board establishes that requirement by regulation based upon the need to protect the public.

(c) The board may require an exempt person to complete a designated number of hours of coursework in board-approved courses of home health education as a condition in connection with any disciplinary action taken against the exempt person.

(d) Each premises maintained by a medical device retailer shall have a license issued by the board and shall have a pharmacist or exempt person on the premises if dangerous devices are furnished, sold, or dispensed.

(e) A medical device retailer may establish locked storage (a lock box or locked area) for emergency or after working hours furnishing of dangerous devices. Locked storage may be installed or placed in a service vehicle of the medical device retailer for emergency or after hours service to patients having prescriptions for dangerous devices.

(f) The board may, by regulation, authorize a pharmacist or exempt person to direct an employee of the medical device retailer who operates the service vehicle equipped with locked storage described in subdivision (e) to deliver a dangerous device from the locked storage to patients having prescriptions for dangerous devices. These regulations shall establish inventory requirements for the locked storage by a pharmacist or exempt person

to take place shortly after a dangerous device has been delivered from the locked storage to a patient.

SEC. 80. Section 4136 of the Business and Professions Code is repealed.

SEC. 81. Section 4136 is added to the Business and Professions Code, to read:

4136. (a) A nonresident medical device retailer shall not sell or distribute dangerous devices in this state through any person or media other than a wholesaler who is licensed pursuant to this chapter without registering as a nonresident medical device retailer.

(b) Applications for a nonresident medical device retailer registration shall be made on a form furnished by the board. The board may require any information it deems reasonably necessary to carry out the purposes of this section.

(c) The Legislature, by enacting this section, does not intend a license issued to any nonresident medical device retailer pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any nonresident medical device retailer.

(d) The Legislature, by enacting this section, does not intend a registration issued to any nonresident medical device retailer pursuant to this section to serve as any evidence that the nonresident medical device retailer is doing business within this state.

SEC. 82. Section 4136.5 is added to the Business and Professions Code, to read:

4136.5. (a) No person acting as principal or agent for any out-of-state medical device retailer who has not obtained a license from the board, and who sells or distributes dangerous devices in this state that are not obtained through a wholesaler who has obtained a license pursuant to this chapter, or that are not obtained through a selling or distribution outlet of an out-of-state manufacturer that is licensed as a wholesaler pursuant to this chapter shall conduct the business of selling or



distributing dangerous devices within this state without registering with the board.

(b) Registration of persons under this section shall be made on a form furnished by the board. The board may require any information as the board deems reasonably necessary to carry out the purposes of this section, including, but not limited to, the name and address of the registrant and the name and address of the manufacturer whose dangerous devices he or she is selling or distributing.

(c) The board may deny, revoke, or suspend the registration of persons registered under this section for any violation of this chapter or for any violation of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code. The board may deny, revoke, or suspend the person's registration if the manufacturer, whose dangerous devices he or she is selling or distributing violates this chapter or Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code.

(d) Registration under this section shall be renewed annually.

SEC. 83. Section 4137 of the Business and Professions Code is amended to read:

4137. When, in the opinion of the board, a high standard of patient safety, consistent with good patient care, can be provided by the licensure of a medical device retailer that does not meet all of the requirements for licensure as a medical device retailer, the board may waive any licensing requirements.

SEC. 84. Section 4138 of the Business and Professions Code is amended to read:

4138. Nothing in this chapter shall be construed to prohibit the storage of dangerous devices as defined in Section 4023 in secure central or ward supply areas of a clinic, hospital, institution, or establishment holding a currently valid and unrevoked license or permit.

SEC. 85. Section 4143 of the Business and Professions Code is amended to read:



4143. This article shall not apply to the sale of hypodermic syringes and needles at wholesale by pharmacies, drug wholesalers, drug manufacturers or manufacturers and dealers in surgical instruments to pharmacies, physicians, dentists, podiatrists, veterinarians, or persons to whom a license has been issued under this article.

SEC. 86. Section 4144 of the Business and Professions Code is amended to read:

4144. A person may sell or obtain hypodermic needles and hypodermic syringes without a prescription or permit, for uses that the board determines are industrial, and that person shall not be required to comply with Section 4145 or 4146.

SEC. 87. Section 4150 of the Business and Professions Code is amended to read:

4150. (a) A pharmacy corporation means a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are pharmacists are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

(b) With respect to a pharmacy corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Pharmacy of the State of California.

SEC. 88. Section 4160 of the Business and Professions Code is amended to read:

4160. (a) No person shall act as a wholesaler of any dangerous drug or dangerous device unless he or she has obtained a license from the board. Upon approval by the board and the payment of the required fee, the board shall issue a license to the applicant.

(b) No selling or distribution outlet, located in this state, of any out-of-state manufacturer, that has not obtained a license from the board, that sells or distributes



only the dangerous drugs or the dangerous devices of that manufacturer, shall sell or distribute any dangerous drug or dangerous device in this state without obtaining a wholesaler's license from the board.

(c) A separate license shall be required for each place of business owned or operated by a wholesaler. Each license shall be renewed annually and shall not be transferable.

SEC. 89. Section 4161 of the Business and Professions Code is amended to read:

4161. (a) No out-of-state manufacturer or wholesaler of dangerous drugs or dangerous devices doing business in this state who has not obtained a license from the board and who sells or distributes dangerous drugs or dangerous devices in this state through any person or media other than a wholesaler who has obtained a license pursuant to this chapter or through a selling or distribution outlet that is licensed as a wholesaler pursuant to this chapter, shall conduct the business of selling or distributing dangerous drugs or dangerous devices in this state without obtaining an out-of-state drug or dangerous device distributor's license from the board.

(b) Applications for an out-of-state dangerous drug or dangerous device distributor's license shall be made on a form furnished by the board. The board may require any information as the board deems is reasonably necessary to carry out the purposes of the section. The license shall be renewed annually.

(c) The Legislature, by enacting this section, does not intend a license issued to any out-of-state manufacturer or wholesaler pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any out-of-state manufacturer or wholesaler.

(d) The Legislature, by enacting this section, does not intend a license issued to any out-of-state manufacturer or wholesaler pursuant to this section to serve as any evidence that the out-of-state manufacturer or wholesaler is doing business within this state.



SEC. 90. Section 4162 of the Business and Professions Code is amended to read:

4162. (a) No person acting as principal or agent for any out-of-state manufacturer, wholesaler, or pharmacy who has not obtained a license from the board, and who sells or distributes dangerous drugs or dangerous devices in this state that are not obtained through a wholesaler who has obtained a license, pursuant to this chapter, or that are not obtained through a selling or distribution outlet of an out-of-state manufacturer that is licensed as a wholesaler, pursuant to this chapter, shall conduct the business of selling or distributing dangerous drugs or dangerous devices within this state without registering with the board.

(b) Registration of persons under this section shall be made on a form furnished by the board. The board may require any information as the board deems reasonably necessary to carry out the purposes of this section, including, but not limited to, the name and address of the registrant and the name and address of the manufacturer whose dangerous drugs or dangerous devices he or she is selling or distributing.

(c) The board may deny, revoke, or suspend the person's registration for any violation of this chapter or for any violation of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code. The board may deny, revoke, or suspend the person's registration if the manufacturer, whose dangerous drugs or dangerous devices he or she is selling or distributing, violates any provision of this chapter or any provision of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code. The registration shall be renewed annually.

SEC. 91. Section 4163 of the Business and Professions Code is amended to read:

4163. No manufacturer or wholesaler shall furnish any dangerous drugs or dangerous devices to any unauthorized persons.

SEC. 92. Section 4164 of the Business and Professions Code is amended to read:



4164. All wholesalers licensed by the board and all manufacturers who distribute controlled substances, dangerous drugs, or dangerous devices within or into this state shall report to the board all sales of dangerous drugs and controlled substances that are subject to abuse, as determined by the board.

SEC. 93. Section 4165 is added to the Business and Professions Code, to read:

4165. (a) Any manufacturer who sells or transfers any dangerous drug or dangerous device into this state or who receives, by sale or otherwise, any dangerous drug or dangerous device from any person in this state shall, on request, furnish an authorized officer of the law with all records or other documentation of that sale or transfer.

(b) Any manufacturer who fails within a reasonable time, or refuses, to comply with subdivision (a), shall be subject to citation and a fine, an order of abatement, or both, pursuant to Section 125.9 and any regulations adopted by the board, in addition to any other remedy provided by law.

SEC. 94. Section 4166 is added to the Business and Professions Code, to read:

4166. (a) Any wholesaler or other distributor that uses the services of any carrier, including, but not limited to, the United States Postal Service or any common carrier, shall be liable for the security and integrity of any dangerous drugs or dangerous devices through that carrier until the drugs or devices are delivered to the transferee at its board-licensed premises.

(b) Nothing in this section is intended to affect the liability of a wholesaler or other distributor for dangerous drugs or dangerous devices after their delivery to the transferee.

SEC. 95. Section 4167 is added to the Business and Professions Code, to read:

4167. A wholesaler shall not obtain, by purchase or otherwise, any dangerous drugs or dangerous devices that it cannot maintain, in a secure manner, on the premises licensed by the board.



SEC. 96. Section 4170 of the Business and Professions Code is amended to read:

4170. (a) No prescriber shall dispense drugs or dangerous devices to patients in his or her office or place of practice unless all of the following conditions are met:

(1) The dangerous drugs or dangerous devices are dispensed to the prescriber's own patient and the drugs or dangerous devices are not furnished by a nurse or attendant.

(2) The dangerous drugs or dangerous devices are necessary in the treatment of the condition for which the prescriber is attending the patient.

(3) The prescriber does not keep a pharmacy, open shop, or drugstore, advertised or otherwise, for the retailing of dangerous drugs, dangerous devices, or poisons.

(4) The prescriber fulfills all of the labeling requirements imposed upon pharmacists by Section 4076, all of the recordkeeping requirements of this chapter, and all of the packaging requirements of good pharmaceutical practice, including the use of childproof containers.

(5) The prescriber does not use a dispensing device unless he or she personally owns the device and the contents of the device, and personally dispenses the dangerous drugs or dangerous devices to the patient packaged, labeled, and recorded in accordance with paragraph (4).

(6) The prescriber, prior to dispensing, offers to give a written prescription to the patient that the patient may elect to have filled by the prescriber or by any pharmacy.

(7) The prescriber provides the patient with written disclosure that the patient has a choice between obtaining the prescription from the dispensing prescriber or obtaining the prescription at a pharmacy of the patient's choice.

(b) The Medical Board of California, the State Board of Optometry, the Board of Dental Examiners of California, and the Osteopathic Medical Board of California shall have authority with the California State



Board of Pharmacy to ensure compliance with this section, and those boards are specifically charged with the enforcement of this chapter with respect to their respective licensees.

(c) “Prescriber,” as used in this section, means a person, who holds a physician’s and surgeon’s certificate, a license to practice optometry, a license to practice dentistry, or a certificate to practice podiatry, and who is duly registered as such by the Medical Board of California, the State Board of Optometry, the Board of Dental Examiners of California, or the Board of Osteopathic Examiners of this state.

SEC. 97. Section 4174 of the Business and Professions Code is amended to read:

4174. Notwithstanding any other provision of law, a pharmacist may dispense drugs or devices upon the order of a nurse practitioner functioning pursuant to Section 2836.1 or a certified nurse midwife functioning pursuant to Section 2746.51, a transmittal order of a physician assistant functioning pursuant to Section 3502.1, or the order of a pharmacist acting under Section 4052.

SEC. 98. Section 4175 of the Business and Professions Code is amended to read:

4175. (a) The California State Board of Pharmacy shall promptly forward to the Medical Board of California, the Board of Dental Examiners of California, the State Board of Optometry, or the Osteopathic Medical Board of California all complaints received related to dangerous drugs or dangerous devices dispensed by a prescriber pursuant to Section 4170.

(b) All complaints involving serious bodily injury due to dangerous drugs or dangerous devices dispensed by prescribers pursuant to Section 4170 shall be handled by the Medical Board of California, the Board of Dental Examiners of California, the State Board of Optometry, or the Osteopathic Medical Board of California as a case of greatest potential harm to a patient.

SEC. 99. Section 4180 of the Business and Professions Code is amended to read:

4180. (a) (1) Notwithstanding any provision of this chapter, any of the following clinics may purchase drugs at wholesale for administration or dispensing, under the direction of a physician, to patients registered for care at the clinic:

(A) A licensed nonprofit community clinic or free clinic as defined in paragraphs (1) and (2) of subdivision (a) of Section 1204 of the Health and Safety Code.

(B) A primary care clinic owned or operated by a county as referred to in subdivision (b) of Section 1206 of the Health and Safety Code.

(C) A clinic operated by a federally recognized Indian tribe or tribal organization as referred to in subdivision (c) of Section 1206 of the Health and Safety Code.

(D) A clinic operated by a primary care community or free clinic, operated on separate premises from a licensed clinic, and that is open no more than 20 hours per week as referred to in subdivision (h) of Section 1206 of the Health and Safety Code.

(E) A student health center clinic operated by a public institution of higher education as referred to in subdivision (j) of Section 1206 of the Health and Safety Code.

(F) A nonprofit multispecialty clinic as referred to in subdivision (l) of Section 1206 of the Health and Safety Code.

(2) The clinic shall keep records of the kind and amounts of drugs purchased, administered, and dispensed, and the records shall be available and maintained for a minimum of seven years for inspection by all properly authorized personnel.

(b) No clinic shall be entitled to the benefits of this section until it has obtained a license from the board. Each license shall be issued to a specific clinic and for a specific location.

SEC. 100. Section 4182 of the Business and Professions Code is amended to read:

4182. (a) Each clinic that makes an application for a license under Section 4180 shall show evidence that the professional director is responsible for the safe, orderly,



and lawful provision of pharmacy services. In carrying out the professional director's responsibilities, a consulting pharmacist shall be retained to approve the policies and procedures in conjunction with the professional director and the administrator. In addition, the consulting pharmacist shall be required to visit the clinic regularly and at least quarterly. However, nothing in this section shall prohibit the consulting pharmacist from visiting more than quarterly to review the application of policies and procedures based on the agreement of all the parties approving the policies and procedures.

(b) The consulting pharmacist shall certify in writing at least twice a year that the clinic is, or is not, operating in compliance with the requirements of this article, and the most recent of those written certifications shall be submitted with the annual application for the renewal of a clinic license.

(c) For the purposes of this article, "professional director" means a physician acting in his or her capacity as medical director.

SEC. 101. Section 4186 of the Business and Professions Code is repealed.

SEC. 102. Section 4191 of the Business and Professions Code is amended to read:

4191. (a) Prior to the issuance of a clinic license authorized under this article the clinic shall comply with all applicable laws and regulations of the State Department of Health Services and the board relating to drug distribution to insure that inventories, security procedures, training, protocol development, recordkeeping, packaging, labeling, dispensing, and patient consultation are carried out in a manner that is consistent with the promotion and protection of the health and safety of the public. These policies and procedures shall include a written description of the method used to develop, approve, and revise those policies and procedures.

(b) The dispensing of drugs in a clinic that has received a license under this article shall be performed



only by a physician, a pharmacist, or other person lawfully authorized to dispense drugs, and only in compliance with all applicable laws and regulations.

SEC. 104. Section 4197 of the Business and Professions Code is amended to read:

4197. (a) The following minimum standards shall apply to all veterinary food-animal drug retailers licensed by the board:

(1) Each retailer shall store veterinary food-animal drugs in a secure, lockable area.

(2) Each retailer shall maintain on the premises fixtures and equipment in a clean and orderly condition. The premises shall be dry, well-ventilated, and have adequate lighting.

(b) The board may, by regulation, impose any other minimum standards pertaining to the acquisition, storage, and maintenance of veterinary food-animal drugs, or other goods, or to the maintenance or condition of the licensed premises of any veterinary food-animal drug retailer as the board determines are reasonably necessary.

(c) When, in the opinion of the board, a high standard of patient safety consistent with good animal safety and care in the case of an animal patient can be provided by the licensure of a veterinary food-animal drug retailer that does not meet all of the requirements for licensure as a veterinary food-animal drug retailer, the board may waive any licensing requirements.

SEC. 105. Section 4200 of the Business and Professions Code is amended to read:

4200. (a) The board shall license as a pharmacist, and issue a certificate to, any applicant who meets all the following requirements:

(1) Is at least 18 years of age.

(2) (A) Has graduated from a college of pharmacy or department of pharmacy of a university recognized by the board; or

(B) If the applicant graduated from a foreign pharmacy school, the applicant has received a grade satisfactory to the board on an examination designed to



measure the equivalency of foreign pharmacy education with that required of domestic graduates.

(3) Has completed at least 150 semester units of collegiate study in the United States, or the equivalent thereof in a foreign country. No less than 90 of those semester units shall have been completed while in resident attendance at a school or college of pharmacy.

(4) Has earned at least a baccalaureate degree in a course of study devoted to the practice of pharmacy.

(5) Has had 1,500 hours of pharmaceutical experience in accordance with regulations adopted by the board.

(A) "Pharmaceutical experience," constitutes service and experience in a pharmacy under the personal supervision of a pharmacist, and consists of service and experience predominantly related to the selling of drugs, compounding physician's prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required under state and federal statutes.

(B) To be credited to the total number of hours required by this subdivision, this experience shall have been obtained in pharmacies and under conditions set forth by rule or regulation of the board.

(6) Has passed a written and practical examination given by the board.

(b) Proof of the qualifications of any applicant for licensure as a pharmacist, shall be made to the satisfaction of the board and shall be substantiated by affidavits or other evidence as may be required by the board.

(c) Each person, upon application for licensure as a pharmacist under this chapter, shall pay to the executive officer of the board, the fees provided by this chapter, which fees shall be compensation to the board for investigation or examination of the applicant.

SEC. 105.3. Section 4200.1 is added to the Business and Professions Code, to read:

4200.1. (a) Notwithstanding Section 135, commencing July 1, 1998, an applicant who fails to pass the examination required by Section 4200 after four attempts shall not be eligible for further reexamination until the applicant has successfully completed a

minimum of an additional 16 semester units of education in pharmacy. The applicant shall complete a minimum of 16 semester units or the equivalent from pharmacy coursework as approved by the board. When the applicant applies for reexamination, he or she shall furnish proof satisfactory to the board that he or she has successfully completed all of the requirements of Section 4200.

(b) From July 1, 1998, to June 1, 2004, inclusive, the board shall collect data on the applicants who are admitted to, and take, the licensure examinations required by Section 4200. The board shall report to the Legislature after June 1, 2004, and before December 31, 2004, regarding the impact on those applicants of the four-attempt limit imposed by this section. The report shall include, but not be limited to, the following:

(1) The number of applicants taking the examination and the number who fail the examination for the fourth time.

(2) The number of applicants who, after failing the examination for the fourth time, apply to take the additional 16 semester units of pharmacy education in California, and the number of these applicants who are accepted into the pharmacy education programs.

(3) The number of applicants who, after failing the examination for the fourth time, apply to participate in any pharmacy studies program, in or out of California, and the number of these applicants accepted by those programs.

(4) To the extent possible, the school and country from which applicants graduated and the comparative pass/fail rates on the examination in relation to the school and country.

(c) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 105.5. Section 4200.5 is added to the Business and Professions Code, to read:



4200.5. (a) The board shall issue, upon application and payment of the fee established by Section 4400, and upon receipt of the applicant's wall certificate, a retired license to a pharmacist who has been licensed by the board for 20 years or longer, and who holds a license that is current and capable of being renewed pursuant to Section 4401, that is not suspended, revoked, or otherwise disciplined, or subject to pending discipline, under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active pharmacist's license is required. A pharmacist holding a retired license shall be permitted to use the titles "retired pharmacist" or "pharmacist, retired."

(c) The holder of a retired license shall not be required to renew that license.

(d) In order for the holder of a retired license issued pursuant to this section to restore his or her license to active status, he or she shall pass the examination that is required for initial licensure with the board.

SEC. 106. Section 4201 of the Business and Professions Code is amended to read:

4201. (a) Each application to conduct a pharmacy, wholesaler, medical device retailer, or veterinary food-animal drug retailer, shall be made on a form furnished by the board, and shall state the name, address, usual occupation, and professional qualifications, if any, of the applicant. If the applicant is other than a natural person, the application shall state the information as to each person beneficially interested therein.

(b) As used in this section, and subject to subdivision (c), the term "person beneficially interested" means and includes:

(1) If the applicant is a partnership or other unincorporated association, each partner or member.

(2) If the applicant is a corporation, each of its officers, directors, and stockholders, provided that no natural person shall be deemed to be beneficially interested in a nonprofit corporation.



(3) If the applicant is a limited liability company, each officer, manager, or member.

(c) In any case where the applicant is a partnership or other unincorporated association, is a limited liability company, or is a corporation, and where the number of partners, members, or stockholders, as the case may be, exceeds five, the application shall so state, and shall further state the information required by subdivision (a) as to each of the five partners, members, or stockholders who own the five largest interests in the applicant entity. Upon request by the executive officer, the applicant shall furnish the board with the information required by subdivision (a) as to partners, members, or stockholders not named in the application, or shall refer the board to an appropriate source of that information.

(d) The application shall contain a statement to the effect that the applicant has not been convicted of a felony and has not violated any of the provisions of this chapter. If the applicant cannot make this statement, the application shall contain a statement of the violation, if any, or reasons which will prevent the applicant from being able to comply with the requirements with respect to the statement.

(e) Upon the approval of the application by the board and payment of the fee required by this chapter for each pharmacy, wholesaler, medical device retailer, or veterinary food-animal drug retailer, the executive officer of the board shall issue a license to conduct a pharmacy, wholesaler, medical device retailer, or veterinary food-animal drug retailer, if all of the provisions of this chapter have been complied with.

(f) Notwithstanding any other provision of law, the pharmacy license shall authorize the holder to conduct a pharmacy. The license shall be renewed annually and shall not be transferable.

(g) Notwithstanding any other provision of law, the wholesale license shall authorize the holder to wholesale dangerous drugs and dangerous devices. The license shall be renewed annually and shall not be transferable.



(h) Notwithstanding any other provision of law, the medical device retailer license shall authorize the holder thereof to operate as a medical device retailer and to sell and dispense dangerous devices.

(i) Notwithstanding any other provision of law, the veterinary food-animal drug retailer license shall authorize the holder thereof to conduct a veterinary food-animal drug retailer and to sell and dispense veterinary food-animal drugs as defined in Section 4042.

(j) For licenses referred to in subdivisions (f), (g), (h), and (i), any change in the proposed beneficial ownership interest shall be reported to the board within 30 days thereafter upon a form to be furnished by the board.

SEC. 107. Section 4202 of the Business and Professions Code is amended to read:

4202. (a) An applicant for registration as a pharmacy technician shall be issued a certificate of registration if he or she meets any one of the following requirements:

(1) Has obtained an Associate of Arts degree in a field of study directly related to the duties performed by a pharmacy technician.

(2) Has completed a course of training specified by the board.

(3) Is eligible to take the board's pharmacist licensure examination, but has not been licensed by the board as a pharmacist. Once licensed as a pharmacist, the pharmacy technician registration is no longer valid and the pharmacy technician certificate of registration must be returned to the board within 15 days.

(4) Has provided satisfactory proof to the board of one year's experience performing the tasks specified in subdivision (a) of Section 4115 while employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital, for an inmate of a correctional facility, or experience deemed equivalent by the board.

(b) The board shall adopt regulations pursuant to this section for the registration of pharmacy technicians and for the specification of training courses as set out in paragraph (2) of subdivision (a). Proof of the



qualifications of any applicant for registration as a pharmacy technician shall be made to the satisfaction of the board and shall be substantiated by any evidence as may be required by the board.

(c) The board shall conduct a criminal background check of the applicant to determine if an applicant has committed acts that would constitute grounds for denial of registration, pursuant to this chapter or Chapter 2 (commencing with Section 480) of Division 1.5.

(d) The board may suspend or revoke any registration issued pursuant to this section on any ground specified in Section 4301.

SEC. 108. Section 4205 of the Business and Professions Code is amended to read:

4205. (a) A license issued pursuant to Section 4110, 4120, 4130, 4160, or 4161 shall be considered a license within the meaning of Section 4141.

(b) The board may, in its discretion, issue a license to any person authorizing the sale and dispensing of hypodermic syringes and needles for use for animals and poultry.

(c) The application for a license shall be made in writing on a form to be furnished by the board. The board may require any information as the board deems reasonably necessary to carry out the purposes of this article.

(d) A separate license shall be required for each of the premises of any person who sells or dispenses hypodermic syringes or needles at more than one location.

(e) A license shall be renewed annually and shall not be transferable.

(f) The board may deny, revoke, or suspend any license issued pursuant to this article for any violation of this chapter.

SEC. 109. Section 4230 of the Business and Professions Code is repealed.

SEC. 110. Section 4231 of the Business and Professions Code is amended to read:

4231. The board shall not issue any renewal certificate unless the applicant submits proof satisfactory to the



board that he or she has successfully completed approved courses of continuing pharmaceutical education during the two years preceding the application for renewal. The continuing education required by this article shall consist of the number of clock hours, not to exceed 30 clock hours, designated by regulation adopted by the board. This section shall not apply to licensees during the first two years immediately following their graduation from a college of pharmacy or department of pharmacy of a university recognized by the board.

SEC. 111. Section 4232 of the Business and Professions Code is amended to read:

4232. (a) The courses shall be in the form of postgraduate studies, institutes, seminars, lectures, conferences, workshops, extension studies, correspondence courses, and other similar methods of conveying continuing professional pharmaceutical education.

(b) The subject matter shall be pertinent to the socioeconomic and legal aspects of health care, the properties and actions of drugs and dosage forms and the etiology, and characteristics and therapeutics of the disease state.

(c) The subject matter of the courses may include, but shall not be limited to, the following: pharmacology, biochemistry, physiology, pharmaceutical chemistry, pharmacy administration, pharmacy jurisprudence, public health and communicable diseases, professional practice management, anatomy, histology, and any other subject matter as represented in curricula of accredited colleges of pharmacy.

SEC. 112. Section 4233 of the Business and Professions Code is repealed.

SEC. 113. Section 4300 of the Business and Professions Code is amended to read:

4300. (a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or

whose case has been heard by the board and found guilty, by any of the following methods:

- (1) Suspending judgment.
- (2) Placing him or her upon probation.
- (3) Suspending his or her right to practice for a period not exceeding one year.
- (4) Revoking his or her license.
- (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.



SEC. 114. Section 4301 of the Business and Professions Code is amended to read:

4301. The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to:

(a) Gross immorality.

(b) Incompetence.

(c) Gross negligence.

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the furnishing of controlled substances is clearly excessive shall include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes its product.

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering or offering to sell, furnish, give away, or administer any controlled substance to an addict.

(j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.



(m) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

(n) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.

(o) Actions or conduct that would have warranted denial of a license.

(p) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

SEC. 115. Section 4303 of the Business and Professions Code is amended to read:

4303. (a) The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4112, 4124, or 4340, for any significant or repeated failure to comply with Section 4074 or 4076, or for failure to comply with Section 11164 of the Health and Safety Code.

(b) The board may deny, revoke, or suspend a nonresident pharmacy registration for conduct that causes serious bodily or serious psychological injury to a resident of this state if the board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to initiate an investigation within 45 days of the referral.

SEC. 116. Section 4305 of the Business and Professions Code is amended to read:

4305. (a) Any person who has obtained a license to conduct a pharmacy, shall notify the board within 30 days of the termination of employment of any pharmacist who takes charge of, or acts as manager of the pharmacy. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(b) Any person who has obtained a license to conduct a pharmacy, who willfully fails to notify the board of the

termination of employment of any pharmacist who takes charge of, or acts as manager of the pharmacy, and who continues to permit the compounding or dispensing of prescriptions, or the furnishing of drugs or poisons, in his or her pharmacy, except by a pharmacist, shall be subject to summary suspension or revocation of his or her license to conduct a pharmacy.

(c) Any pharmacist who takes charge of, or acts as manager of a pharmacy, who terminates his or her employment at the pharmacy, shall notify the board within 30 days of termination of employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

SEC. 117. Section 4305.5 is added to the Business and Professions Code, to read:

4305.5. (a) Any person who has obtained a license to conduct a wholesaler, medical device retailer, or veterinary food-animal drug retailer, shall notify the board within 30 days of the termination of employment of any pharmacist or exemptee who takes charge of, or acts as manager of the licensee. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(b) Any person who has obtained a license to conduct a wholesaler, medical device retailer, or veterinary food-animal drug retailer, who willfully fails to notify the board of the termination of employment of any pharmacist or exemptee who takes charge of, or acts as manager of the licensee, and who continues to operate the licensee in the absence of a pharmacist or an exemptee approved for that location, shall be subject to summary suspension or revocation of his or her license to conduct a pharmacy.

(c) Any pharmacist or exemptee who takes charge of, or acts as manager of a wholesaler, medical device retailer, or veterinary food-animal drug retailer, who terminates his or her employment at the licensee, shall notify the board within 30 days of the termination of employment. Failure to notify the board within the



30-day period shall constitute grounds for disciplinary action.

SEC. 118. Section 4306.5 is added to the Business and Professions Code, to read:

4306.5. Unprofessional conduct for a pharmacist may include acts or omissions that involve, in whole or in part, the exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

SEC. 119. Section 4307 of the Business and Professions Code is amended to read:

4307. (a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

(b) “Manager, administrator, owner, member, officer, director, associate, or partner,” as used in this section and Section 4308, may refer to a pharmacist or to any other person who serves in that capacity in or for a licensee.



(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. However, no order may be issued in that case except as to a person who is named in the caption, as to whom the pleading alleges the applicability of this section, and where the person has been given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision shall be in addition to the board's authority to proceed under Section 4339 or any other provision of law.

SEC. 120. Section 4309 of the Business and Professions Code is amended to read:

4309. (a) A person whose license has been revoked or suspended or who has been placed on probation may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after not less than the following minimum periods have elapsed from the effective date of the decision ordering disciplinary action:

(1) At least three years for reinstatement of a revoked license.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition shall state any facts required by the board, and the petition shall be accompanied by two or more verified recommendations from holders of licenses issued by the board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the board and the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by the board sitting with an administrative law judge, or a committee of the



board sitting with an administrative law judge, or the board may assign the petition to an administrative law judge. Where the petition is heard by a committee of the board sitting with an administrative law judge or by an administrative law judge sitting alone, the decision shall be subject to review by the board pursuant to Section 11517 of the Government Code.

(d) In considering reinstatement or modification of penalty, the board, committee of the board, or the administrative law judge hearing the petition may consider factors including, but not limited to, all of the following:

(1) All the activities of the petitioner since the disciplinary action was taken.

(2) The offense for which the petitioner was disciplined.

(3) The petitioner's activities during the time the license was in good standing.

(4) The petitioner's documented rehabilitative efforts.

(5) The petitioner's general reputation for truth and professional ability.

(e) The hearing may be continued from time to time as the board, committee of the board, or the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The board, committee of the board, or administrative law judge may impose necessary terms and conditions on the licensee in reinstating the license.

(g) No petition under this section shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(h) Nothing in this section shall be deemed to amend or otherwise change the effect or application of Sections 822 and 823.

(i) The board may investigate any and all matters pertaining to the petition and documents submitted with or in connection with the application.

SEC. 121. Section 4311 of the Business and Professions Code is amended to read:

4311. (a) Any license issued by the board, or the holder thereof, shall be suspended automatically during any time that the person is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board, immediately upon receipt of a certified copy of a record of a criminal conviction, shall determine whether the person has been automatically suspended by virtue of incarceration pursuant to a felony conviction and, if so, the duration of that suspension. The board shall notify the person so suspended of the suspension and that the person has a right to request a hearing, solely as to whether he or she is incarcerated pursuant to a felony conviction, in writing at that person's address of record with the board and at the facility in which the person is incarcerated.

(b) In addition to any suspension under subdivision (a), the board shall summarily suspend any license issued by the board where a conviction of the holder of the license meets the requirements of paragraphs (1) and (2).

(1) A felony that was either of the following:

(A) Committed in the course of a business or practice for which the board issues a license.

(B) Committed in a manner that a client, customer, or patient of the licensee was a victim.

(2) Where an element of the offense involves either of the following:

(A) The specific intent to deceive, defraud, steal, or make a false statement.

(B) The illegal sale or possession for sale of or trafficking in any controlled substance.



(3) The suspension shall continue until the time for appeal has elapsed, if no appeal is taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(4) The board shall immediately send notice in writing of the suspension to the licensee, or the holder of any other board issued license, at his or her address of record and, if incarcerated at the time, at the facility in which the person is incarcerated. The notice shall include notification of that person's right to elect to have the issue of penalty heard as provided in paragraph (2) of subdivision (d), and of the right to request a hearing to contest the summary suspension. Any request for a hearing under this paragraph must be received by the board within 15 days following receipt of the notice provided for by this paragraph.

(5) The hearing shall be before an administrative law judge, a committee of the board sitting with an administrative law judge, or the board sitting with an administrative law judge, at the board's discretion, and shall be subject to review by the board, at its discretion. The hearing shall be limited to (A) whether there has been a felony conviction as stated in the board's notice, and (B) whether the conviction meets the criteria of this subdivision, except where the licensee chooses to proceed as provided by paragraph (2) of subdivision (d), or where the board has also filed and served an accusation as provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and given notice of the hearing as required by that chapter; provided that if an accusation under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is also to be heard, only an administrative law judge sitting alone or the board, sitting with an administrative law judge, may hear the case.

(c) In addition to any suspension under subdivision (a), the board shall also suspend any license issued by the board, or the holder thereof, if the board determines that



the felony conviction of the holder of the license is substantially related to the qualifications, functions, or duties of the licensee.

(1) Notice of the board's determination shall be sent to the licensee, or the holder thereof, at that person's address of record with the board and, if the person is incarcerated at the time, the facility in which the person is incarcerated. The notice shall advise the person that the license shall be suspended without hearing unless, within 15 days following receipt of the notice, a written request for hearing is delivered to the board.

(2) Upon receipt of a timely request for hearing, a notice of hearing shall be sent to the person at least 10 days before the date scheduled for the hearing. The notice of hearing shall include notification of that person's right to elect to have the issue of penalty heard as provided in paragraph (2) of subdivision (d).

(3) The hearing to determine whether a felony conviction is substantially related for purposes of an interim suspension under this subdivision shall be separate from any hearing on an accusation under the Administrative Procedure Act, except where the licensee elects to proceed under paragraph (2) of subdivision (d), or where the board has filed and served an accusation as provided by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and given notice of hearing as required by that chapter. The hearing on whether the felony conviction is substantially related shall be heard either by an administrative law judge sitting alone, by a committee of the board sitting with an administrative law judge, or by the board sitting with an administrative law judge, at the board's discretion, and shall be subject to review by the board, at its discretion. However, if an accusation under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is also to be heard, only an administrative law judge sitting alone or the board, sitting with an administrative law judge, may hear the case. Except where a person proceeds under paragraph (2) of subdivision (d), or the board proceeds



with an accusation at the same time, any suspension imposed under this subdivision shall continue until an accusation is filed under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and a final decision is rendered by the board.

(4) A conviction of any crime referred to in Section 4301, or for violation of Section 187, 261, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee of the board. Upon its own motion or for good cause shown the board may decline to impose a suspension under this subdivision or may set aside a suspension previously imposed when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the practice of pharmacy and the handling of dangerous drugs and devices.

(d) (1) Discipline may be ordered in accordance with Section 4300 or an application denied when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge sitting alone or with a committee of the board or with the board itself, at the board's discretion, and any decision shall be subject to review by the board, at its discretion. The hearing shall not be held until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; provided that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the



issue of penalty shall be heard in the manner described in this section at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of the licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause, including the facts underlying the conviction, other than the overturned conviction.

(3) The record of the proceedings resulting in the criminal conviction, including a transcript of any testimony taken in connection with the proceeding, may be received in evidence in any administrative proceeding to the extent the testimony would otherwise be admissible under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. A certified copy of the criminal conviction shall be conclusive proof of the fact of the conviction.

(e) Other provisions of this chapter setting forth procedures for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section, except as specifically provided in this section.

(f) For purposes of this section, a crime is a felony if it is specifically declared to be so or is made a felony by subdivision (a) of Section 17 of the Penal Code, unless it is charged as a misdemeanor pursuant to paragraph (4) or (5) of subdivision (b) of Section 17 of the Penal Code, irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of postconviction proceedings. For purposes of this section, a felony also includes a conviction under federal law, or the law of any other state of the United States, of the District of Columbia, or of any territory or possession of the United States. A conviction includes a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(g) The board may delegate the authority to issue a suspension under subdivision (a) or (b) or a notice of



suspension under subdivision (c) to the executive officer of the board.

SEC. 122. Section 4312 of the Business and Professions Code is amended to read:

4312. (a) The board may void the license of a wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer if the licensed premises remains closed, as defined in subdivision (e), other than by order of the board. For good cause shown, the board may void a license after a shorter period of closure. To void a license pursuant to this subdivision, the board shall make a diligent, good faith effort to give notice by personal service on the licensee. If no written objection is received within 10 days after personal service is made or a diligent, good faith effort to give notice by personal service on the licensee has failed, the board may void the license without the necessity of a hearing. If the licensee files a written objection, the board shall file an accusation based on the licensee remaining closed. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted in that chapter.

(b) In the event that the license of a wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer is voided pursuant to subdivision (a) or revoked pursuant to Article 9 (commencing with Section 4300), or a wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer, notifies the board of its intent to remain closed or to discontinue business, the licensee shall, within 10 days thereafter, arrange for the transfer of all dangerous drugs and controlled substances or dangerous devices to another licensee authorized to possess the dangerous drugs and controlled substances or dangerous devices. The licensee transferring the dangerous drugs and controlled substances or dangerous devices shall immediately confirm in writing to the board that the transfer has taken place.



(c) If a wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer fails to comply with subdivision (b), the board may seek and obtain an order from the superior court in the county in which the wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer is located, authorizing the board to enter the wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer and inventory and store, transfer, sell, or arrange for the sale of, all dangerous drugs and controlled substances and dangerous devices found in the wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer.

(d) In the event that the board sells or arranges for the sale of any dangerous drugs, controlled substances, or dangerous devices pursuant to subdivision (c), the board may retain from the proceeds of the sale an amount equal to the cost to the board of obtaining and enforcing an order issued pursuant to subdivision (c), including the cost of disposing of the dangerous drugs, controlled substances, or dangerous devices. The remaining proceeds, if any, shall be returned to the licensee from whose premises the dangerous drugs or controlled substances or dangerous devices were removed.

(1) The licensee shall be notified of his or her right to the remaining proceeds by personal service or by certified mail, postage prepaid.

(2) Where a statute or regulation requires the licensee to file with the board his or her address, and any change of address, the notice required by this subdivision may be sent by certified mail, postage prepaid, to the latest address on file with the board and service of notice in this manner shall be deemed completed on the 10th day after the mailing.

(3) If the licensee is notified as provided in this subdivision, and the licensee fails to contact the board for the remaining proceeds within 30 calendar days after personal service has been made or service by certified mail, postage prepaid, is deemed completed, the remaining proceeds shall be deposited by the board into



the Pharmacy Board Contingent Fund. These deposits shall be deemed to have been received pursuant to Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure and shall be subject to claim or other disposition as provided in that chapter.

(e) For the purposes of this section, “closed” means not engaged in the ordinary activity for which a license has been issued for at least one day each calendar week during any 120-day period.

(f) Nothing in this section shall be construed as requiring a pharmacy to be open seven days a week.

SEC. 123. Section 4313 is added to the Business and Professions Code, to read:

4313. In determining whether to grant an application for licensure or whether to discipline or reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence.

SEC. 124. Section 4320 of the Business and Professions Code is amended to read:

4320. (a) The penalties prescribed in this chapter may be recovered in any court having jurisdiction, by a civil action instituted by the board in the name of the State of California, or by criminal prosecution upon complaint being made.

(b) The district attorney of the county wherein violations of this chapter occur shall conduct all felony prosecutions at the request of the board. The district attorney of the county or city attorney of the city wherein violations of this chapter occur shall conduct all other actions and prosecutions at the request of the board.

SEC. 125. Section 4321 of the Business and Professions Code is amended to read:

4321. (a) Any person who knowingly violates any of the provisions of this chapter, when no other penalty is provided, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred dollars (\$200), and not more than two

thousand dollars (\$2,000), or by imprisonment of not less than 30 days nor exceeding six months, or by both that fine and imprisonment.

(b) In all other instances, any person who violates any of the provisions of this chapter, when no other penalty is provided, is guilty of an infraction, and upon conviction thereof may be punished by a fine not to exceed one thousand dollars (\$1,000).

SEC. 126. Section 4322 of the Business and Professions Code is amended to read:

4322. Any person who attempts to secure or secures licensure for himself or herself or any other person under this chapter by making or causing to be made any false representations, or who fraudulently represents himself or herself to be registered, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding four hundred dollars (\$400), or by imprisonment not exceeding 50 days, or by both that fine and imprisonment.

SEC. 127. Section 4326 of the Business and Professions Code is amended to read:

4326. (a) Any person who obtains a hypodermic needle or hypodermic syringe by a false or fraudulent representation or design or by a forged or fictitious name, or contrary to, or in violation of, any of the provisions of this chapter, is guilty of a misdemeanor.

(b) Any person who has obtained a hypodermic needle or hypodermic syringe from any person to whom a permit has been issued as provided in Article 9 (commencing with Section 4140) and who uses, or permits or causes, directly or indirectly, the hypodermic needle or hypodermic syringe to be used for any purpose other than that for which it was obtained is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not exceeding one year, or both a fine and imprisonment.

SEC. 128. Section 4331 of the Business and Professions Code is amended to read:



4331. (a) Any person who is neither a pharmacist nor an exemptee and who takes charge of a medical device retailer, wholesaler, or veterinary food-animal drug retailer or who dispenses a prescription or furnishes dangerous devices except as otherwise provided in this chapter is guilty of a misdemeanor.

(b) Any person who has obtained a license to conduct a medical device retailer and who fails to place in charge of that medical device retailer a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the compounding or dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(c) Any person who has obtained a license to conduct a veterinary food-animal drug retailer and who fails to place in charge of that veterinary food-animal drug retailer a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(d) Any person who has obtained a license to conduct a wholesaler and who fails to place in charge of that wholesaler a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

SEC. 129. Section 4333 of the Business and Professions Code is amended to read:

4333. (a) All prescriptions filled by a pharmacy and all other records required by Section 4081 shall be maintained on the premises and available for inspection by authorized officers of the law for a period of at least three years. In cases where the pharmacy discontinues business, these records shall be maintained in a board-licensed facility for at least three years.

(b) Any person who willfully fails to comply with subdivision (a) is guilty of a misdemeanor, and upon



conviction thereof, shall be punished by a fine not exceeding two hundred dollars (\$200). Any person convicted of a second or subsequent offense shall be punished by a fine of not less than two hundred dollars (\$200) and not more than four hundred dollars (\$400).

(c) (1) Notwithstanding subdivisions (a) and (b), the board may, upon written request, grant a waiver of the requirement that the records described in subdivisions (a) and (b) be maintained on the licensed premises or, in the event the pharmacy discontinues business, that the records be maintained in a board licensed facility. A person who maintains records in compliance with that waiver is not subject to the penalties set forth in subdivision (b).

(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter.

SEC. 130. Section 4339 of the Business and Professions Code is amended to read:

4339. (a) The board may bring an action to enjoin the violation of any provision of this chapter in any superior court in and for the county in which the violation has occurred. Any action shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the board shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss. The action shall be brought in the name of the people of the State of California.

(b) Nothing in this section shall permit the bringing of any action with respect to any drug or product not subject to Section 4022 that is packaged or bottled in the manufacturer's or distributor's container and labeled in accordance with applicable federal and state drug labeling requirements.

(c) The authority granted by this section is in addition to the authority of the board to institute any other administrative, civil, or criminal action.

SEC. 131. Section 4341 of the Business and Professions Code is amended to read:



4341. Notwithstanding any other provision of law, prescription drugs or devices may be advertised if the advertisement conforms with the requirements of Section 651.

SEC. 133. Section 4360 of the Business and Professions Code is amended to read:

4360. It is the intent of the Legislature that the board seek ways and means to identify and rehabilitate pharmacists whose competency may be impaired due to abuse of alcohol and other drugs, or due to mental illness, so that these pharmacists may be treated and returned to the practice of pharmacy in a manner that will not endanger the public health and safety. It is also the intent of the Legislature that the board shall implement this legislation by establishing a diversion program as a voluntary alternative to traditional disciplinary actions.

SEC. 134. Section 4361 of the Business and Professions Code is amended to read:

4361. As used in this article:

(a) “Diversion program” means a rehabilitation program designed and administered by a contracting Employee Assistance Program, available to the board in conjunction with, or as an alternative to, other traditional sanctions that the board may impose upon pharmacists pursuant to disciplinary actions within its jurisdiction.

(b) “Employee assistance program” means an agency or organization that provides confidential assessments and referral services for persons experiencing problems related to alcohol, drug abuse, or mental illness.

(c) “Pharmacists recovery program” or “program” means the rehabilitation program created by this article for pharmacists whose competency may be threatened or diminished due to abuse of alcohol or other drugs.

(d) “Volunteer intervenor” means a pharmacist recruited through a pharmacists’ professional association who is available and trained to assist pharmacists seeking the benefits of the pharmacist’s recovery program.

SEC. 135. Section 4369 of the Business and Professions Code is amended to read:

4369. (a) The board shall inform, in writing, each pharmacist referred to the employees assistance program as part of a board action of the procedures followed in the program, of the rights and responsibilities of the pharmacist in the program, and of the possible consequences of noncompliance with the program.

(b) Any failure to comply with the provisions of the treatment program may result in the termination of the pharmacist's participation in the diversion program. The name and license number of a pharmacist who is terminated for failure to comply with the provisions of the treatment program and the basis for the termination shall be reported to the board.

(c) Participation in a program under this article shall not be a defense to any disciplinary action that may be taken by the board. Further, no provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program under this article.

SEC. 136. Section 4370 of the Business and Professions Code is amended to read:

4370. (a) The employee assistance program shall inform, in writing, each pharmacist who voluntarily participates in the diversion program without referral by the board of the procedures followed in the program, of the rights and responsibilities of the pharmacist in the program, and of the possible consequences of noncompliance with the program.

(b) The board shall be informed of the pharmacist's noncompliance with the treatment program if the employee assistance program determines that the pharmacist's resuming the practice of pharmacy would pose a threat to the health and safety of the public. The board shall be informed of the basis for the pharmacist's termination and of the determination that the pharmacist's resuming the practice of pharmacy would pose a threat to the health and safety of the public.

(c) Participation in a program under this article shall not be a defense to any disciplinary action that may be taken by the board. Further, no provision of this article



shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program under this article.

SEC. 137. Section 4372 of the Business and Professions Code is amended to read:

4372. All board records and records of the employee assistance program pertaining to the treatment of a pharmacist in the program shall be kept confidential and are not subject to discovery or subpoena. However, board records and records of the employee assistance program may be disclosed and testimony provided in connection with participation pursuant to Section 4369 or 4370, but only to the extent those records or testimony are relevant to the conduct for which the pharmacist was terminated from the program.

SEC. 138. Section 4400 of the Business and Professions Code is amended to read:

4400. The amount of fees and penalties prescribed by this chapter, except as otherwise provided, is that fixed by the board according to the following schedule:

(a) (1) The fee for a nongovernmental pharmacy license shall be three hundred forty dollars (\$340) and may be increased to four hundred dollars (\$400).

(2) The fee for a medical device retailer license shall not exceed the fee for a nongovernmental pharmacy license.

(b) The fee for a nongovernmental pharmacy or medical device retailer annual renewal shall be one hundred seventy-five dollars (\$175) and may be increased to two hundred fifty dollars (\$250).

(c) The fee for processing remodeling plans and inspecting a remodeled pharmacy shall be one hundred thirty dollars (\$130) and may be increased to one hundred seventy-five dollars (\$175).

(d) The fee for the pharmacist examination shall be one hundred fifty-five dollars (\$155) and may be increased to one hundred eighty-five dollars (\$185).

(e) The fee for regrading an examination shall be seventy-five dollars (\$75) and may be increased to eighty-five dollars (\$85). If an error in grading is found

and the applicant passes the examination, the regrading fee shall be refunded.

(f) The fee for a pharmacist license and biennial renewal shall be one hundred fifteen dollars (\$115) and may be increased to one hundred fifty dollars (\$150).

(g) The fee for a wholesaler license and annual renewal shall be five hundred fifty dollars (\$550) and may be increased to six hundred dollars (\$600).

(h) The fee for a hypodermic license and renewal shall be ninety dollars (\$90) and may be increased to one hundred twenty-five dollars (\$125).

(i) The fee for examination and investigation for an exemptee license under Sections 4053 and 4054 shall be seventy-five dollars (\$75) and may be increased to one hundred dollars (\$100), except for a veterinary food-animal drug retailer exemptee, for whom the fee shall be one hundred dollars (\$100).

(j) The fee for an exemptee license and annual renewal under Sections 4053 and 4054 shall be one hundred ten dollars (\$110) and may be increased to one hundred fifty dollars (\$150), except that the fee for the issuance of a veterinary food-animal drug retailer exemptee license shall be one hundred fifty dollars (\$150), for renewal one hundred ten dollars (\$110), which may be increased to one hundred fifty dollars (\$150), and for filing a late renewal fifty-five dollars (\$55).

(k) The fee for an out-of-state drug distributor's license and annual renewal issued pursuant to Section 4120 shall be five hundred fifty dollars (\$550) and may be increased to six hundred dollars (\$600).

(l) The fee for registration and annual renewal of providers of continuing education shall be one hundred dollars (\$100) and may be increased to one hundred thirty dollars (\$130).

(m) The fee for evaluation of continuing education courses for accreditation shall be set by the board at an amount not to exceed forty dollars (\$40) per course hour.

(n) The fee for evaluation of applications submitted by graduates of foreign colleges of pharmacy or colleges of pharmacy not recognized by the board shall be one



hundred sixty-five dollars (\$165) and may be increased to one hundred seventy-five dollars (\$175).

(o) The fee for an intern license or extension shall be sixty-five dollars (\$65) and may be increased to seventy-five dollars (\$75). The fee for transfer of intern hours or verification of licensure to another state shall be fixed by the board not to exceed twenty dollars (\$20).

(p) The board may, by regulation, provide for the waiver or refund of the additional fee for the issuance of a certificate where the certificate is issued less than 45 days before the next succeeding regular renewal date.

(q) The fee for the reissuance of any license, or renewal thereof, that has been lost or destroyed or reissued due to a name change is thirty dollars (\$30).

(r) The fee for the reissuance of any license, or renewal thereof, that must be reissued because of a change in the information, is sixty dollars (\$60) and may be increased to one hundred dollars (\$100).

(s) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Pharmacy Board Contingent Fund equal to approximately one year's operating expenditures.

(t) The fee for any applicant for a clinic permit is three hundred forty dollars (\$340) and may be increased to four hundred dollars (\$400) for each permit. The annual fee for renewal of the permit is one hundred seventy-five dollars (\$175) and may be increased to two hundred fifty dollars (\$250) for each permit.

(u) The board shall charge a fee for the processing and issuance of a registration to a pharmacy technician and a separate fee for the biennial renewal of the registration. The registration fee shall be twenty-five dollars (\$25) and may be increased to fifty dollars (\$50). The biennial renewal fee shall be twenty-five dollars (\$25) and may be increased to fifty dollars (\$50).

(v) The fee for a veterinary food-animal drug retailer license shall be four hundred dollars (\$400). The annual renewal fee for a veterinary food-animal drug retailer shall be two hundred fifty dollars (\$250).

(w) The fee for issuance of a retired license pursuant to Section 4200.5 shall be thirty dollars (\$30).

SEC. 139. Section 4401 of the Business and Professions Code is amended to read:

4401. Every pharmacist who desires to retain his or her license on the books of the board shall biennially pay to the executive officer of the board the renewal fee, established by the board, within the limits prescribed by this chapter. In return for the payment of the renewal fee, a certificate of renewal shall be issued.

SEC. 140. Section 4402 of the Business and Professions Code is amended to read:

4402. (a) Any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period.

(b) (1) Any pharmacist whose license is canceled pursuant to subdivision (a) may obtain a new license if he or she takes and passes the examination that is required for initial license with the board.

(2) The board may impose conditions on any license issued pursuant to this section, as it deems necessary.

(c) A license that has been revoked by the board under former Section 4411 shall be deemed canceled three years after the board's revocation action, unless the board has acted to reinstate the license in the interim.

(d) This section shall not affect the authority of the board to proceed with any accusation that has been filed prior to the expiration of the three-year period.

(e) Any other license issued by the board shall be canceled by operation of law if the license is not renewed within 60 days after its expiration. Any license canceled under this subdivision may not be reissued. Instead, a new application will be required.

SEC. 140.5. Section 19059.5 of the Business and Professions Code is amended to read:

19059.5. Every sanitizer, unless he or she holds a license as an upholstered furniture and bedding manufacturer, retail furniture and bedding dealer, retail



bedding dealer, or a custom upholsterer, shall hold a sanitizer's license.

SEC. 140.7. Section 19170 of the Business and Professions Code is amended to read:

19170. (a) The fee imposed for the issuance and for the biennial renewal of each license granted under this chapter shall be set by the chief, with the approval of the director, at a sum not more nor less than that shown in the following table:

	Maximum fee	Minimum fee
Importer's license	\$540	\$120
Furniture and bedding manufacturer's license	540	120
Wholesale furniture and bedding dealer's license	540	120
Supply dealer's license	540	120
Custom upholsterer's license	360	80
Sanitizer's license	360	80
Retail furniture and bedding dealer's license	240	40
Retail furniture dealer's license	120	20
Retail bedding dealer's license	120	20

(b) Individuals who, in their own homes and without the employment of any other person, make, sell, advertise, or contract to make pillows, quilts, quilted pads, or comforters are exempt from the fee requirements imposed by subdivision (a). However, these individuals shall comply with all other provisions of this chapter.

(c) Retailers who only sell "used" and "antique" furniture as defined in Sections 19008.1 and 19008.2 are exempt from the fee requirements imposed by subdivision (a). Those retailers are also exempt from the other provisions of this chapter.

(d) A person who makes, sells, or advertises upholstered furniture and bedding as defined in Sections 19006 and 19007, and who also makes, sells, or advertises



furniture used exclusively for the purpose of physical fitness and exercise, shall comply with the fee requirements imposed by subdivision (a).

(e) It is the intent of the Legislature that upon the enactment of the amendments to this section, the two hundred twenty-four thousand dollars (\$224,000) unallocated reduction proposed in the 1993–94 Governor’s Budget shall be restored to the Bureau of Home Furnishings and Thermal Insulation Fund.

SEC. 141. Section 11122 of the Health and Safety Code is amended to read:

11122. (a) A controlled substance shall be stored only in a warehouse that is licensed by the California State Board of Pharmacy.

(b) This section shall not apply to any of the following:

(1) Any pharmacy or other person who is licensed or authorized by this state to sell or furnish the controlled substance upon the written prescription of a practitioner, as defined in subdivision (a) of Section 11026.

(2) Any practitioner, as defined in subdivision (a) of Section 11026, who possesses a controlled substance for administration to his or her patients.

(3) Any licensed laboratory in this state that is authorized to receive and use the controlled substance.

(4) Any licensed hospital in this state.

(5) Any person who obtains the controlled substance upon the prescription of a practitioner, as defined in subdivision (a) of Section 11026, for his or her personal use.

(6) Any agent or employee of any licensed manufacturer or wholesaler who possesses the controlled substance for display purposes or furnishes controlled substances as a sample at no cost to a licensed pharmacist or practitioner, as defined in subdivision (a) of Section 11026.

(7) A manufacturer licensed pursuant to Section 111615 of this code or Section 4160 or 4161 of the Business and Professions Code.

(8) A wholesaler licensed pursuant to Section 4160 or 4161 of the Business and Professions Code.



(9) Any emergency medical technician-II, emergency medical technician-paramedic, or mobile intensive care nurse, certified or authorized pursuant to Division 2.5 (commencing with Section 1797) to provide prehospital limited advanced life support or advanced life support as part of a local emergency medical services system, who, in a secure manner and according to policies and procedures established by the local emergency medical services agency as part of the local emergency medical services plan, transports, stores, or administers controlled substances acting within his or her scope of practice.

(10) Any emergency medical response or transport unit that has been approved by the local emergency medical services agency and is operating as part of the local emergency medical services system according to policies and procedures established by the local medical services agency for the emergency medical treatment and transport of patients, upon which, controlled substances authorized by the scope of practice of the prehospital personnel approved to staff the unit are stored or transported in a secure manner according to policies and procedures established by the local emergency medical services agency.

SEC. 142. Section 11150 of the Health and Safety Code is amended to read:

11150. No person other than a physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or out-of-state prescriber pursuant to Section 4005 of the Business and Professions Code shall write or issue a prescription.

SEC. 143. Section 1.5 of this bill incorporates amendments to Section 4001 of the Business and



Professions Code proposed by both this bill and SB 827. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, and (2) each bill amends Section 4001 of the Business and Professions Code, and (3) this bill is enacted after SB 827, in which case Section 1 of this bill shall not become operative.

SEC. 144. Section 3.5 of this bill incorporates amendments to Section 4003 of the Business and Professions Code proposed by both this bill and SB 827. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, and (2) each bill amends Section 4003 of the Business and Professions Code, and (3) this bill is enacted after SB 827, in which case Section 3 of this bill shall not become operative.

SEC. 145. Section 7.5 of this bill incorporates amendments to Section 4008 of the Business and Professions Code proposed by both this bill and SB 827. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, and (2) each bill amends Section 4008 of the Business and Professions Code, and (3) this bill is enacted after SB 827, in which case Section 7 of this bill shall not become operative.

SEC. 146. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million



dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved _____, 1997

Governor

